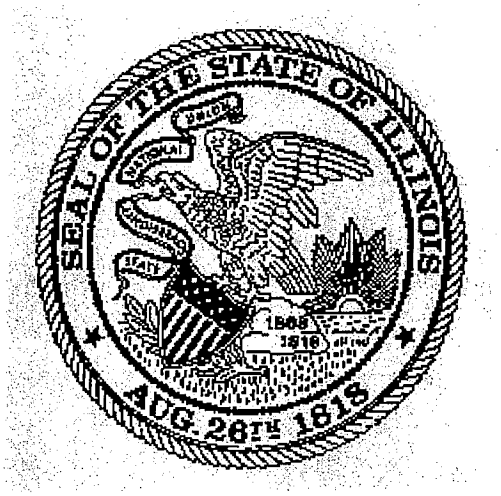
STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION



Contract for Services

Statewide Highway/Rail Grade Crossing Data Collection and Analysis Update Study

Reference #07-0001

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CONTRACT FOR SERVICES

The following pages, including any attachments or amendments, will constitute the binding and enforceable contract between the Agency/Buyer and the Vendor based upon the submission of the bid and any subsequent negotiations. The Contract is arranged as follows:

1. **AGENCY/BUYER AND VENDOR CONTACT PAGE:** This section provides for the Agency/Buyer and Vendor to specify contact people for the Contract.
2. **SERVICES VENDOR AGREES TO PERFORM:** The Agency/Buyer requests from the Vendor, in this section, a detailed description of how the Vendor will meet the contractual requirements and Agency/Buyer needs.
3. **PRICE:** This section will detail pricing/compensation requirements with at least the following categories of information: (1) Method and Rate of Compensation, (2) Maximum Compensation for Supplies and/or Services, (3) Expenses, (4) Payment Terms and Conditions, (5) Discounts, (6) Tax Exemption.
4. **TERMS AND CONDITIONS:** This section contains the State's terms and conditions for this Contract.
5. **AGENCY/BUYER SUPPLEMENTAL TERMS AND CONDITIONS:** This section indicates whether or not any supplemental terms and conditions are attached and applicable to this Contract.
6. **STATE FORMS REQUIRED OF THE VENDOR:** This section includes all State Forms that are required to be included in the Contract.
7. **SIGNATURE PAGE: CONTRACT FOR SERVICES:** This section provides for the Agency/Buyer and Vendor to sign and execute the Contract.

1. AGENCY/BUYER AND VENDOR CONTACT PAGE

	VENDOR		AGENCY/BUYER
Name:	Steve Kehoe	Name:	Chuck Broers
Title:	Senior Project Manager	Title:	Senior Rail Safety Specialist
Date:	7-14-06	Date:	7-14-06
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Phone:	(217) 875-4800	Phone:	(217) 785-8424
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(fill out below fields if additional contact information is necessary)

Name:	_____	Name:	Angie Oxley
Title:	_____	Title:	Senior Project Consultant
Date:	_____	Date:	7-14-06
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Phone:	_____	Phone:	(217) 782-9135
TDD:	_____	TDD:	_____
Fax:	_____	Fax:	(217) 785-5231
E-mail:	_____	E-mail:	aoxley@icc.illinois.gov

2. SERVICES VENDOR AGREES TO PERFORM

The primary work product of this project is an annual update of data/information maintained by Agency/Buyer of an inventory of public highway/rail grade crossings throughout the State of Illinois. Information on selected public grade crossings will be updated each year, over a period of five years. Each year (over a 5-year period), inventory data for public grade crossings in a specific locale of the state will be collected. At the direction of the Agency/Buyer the Vendor will also be required to provide data (inventory information, ground photos, location sketches, and Global Positioning System (GPS) coordinates) for new grade crossings, as well as grade crossings where warning device changes have occurred within the previous five years.

2.1 Overall Project Management:

2.1.1 Provide overall project management, coordinate with Agency/Buyer Staff, provide regular monthly progress reports and other related services.

2.1.2 Project management duties will require Vendor to coordinate the work of its crews and/or its subcontractor's crews in obtaining all crossing inventory information, including: field data; ground and aerial photos; location sketches and GPS coordinates. All field crews must receive railroad worker safety training prior to commencement of field data collection activities. The safety training shall be in accordance with American Association of Railroads (AAR) or Federal Railroad Administration (FRA) requirements. The cost of safety training will be paid solely by Vendor and is not subject to reimbursement by Agency/Buyer.

2.1.3 Vendor shall include a Quality Assurance/Quality Control (QA/QC) Plan for the work described herein. The QA/QC Plan should be approved by the Agency/Buyer's Transportation Division Staff and should meet the following requirements:

2.1.3.1 a minimum of ten percent (10%) of all crossings surveyed by each field crew shall be field-checked for accuracy by an independent field crew.

2.1.3.2 a minimum of twenty-five percent (25%) of all field data collected shall be reviewed for accuracy.

2.2 Development of Data Collection Procedures:

2.2.1 Vendor shall develop a comprehensive plan to provide for complete management of all field data collected in a concise manner. The plan details how collected data will be gathered, managed, stored and accessed by the Agency/Buyer; how photographs and location sketches for each crossing and/or structure will be incorporated with the field-collected dimensional and numerical data and how the field data, location sketches, photographs and GPS coordinates will be packaged into a format compatible with a Structured Query Language (SQL) database.

2.2.2 Vendor shall guarantee the accuracy of the information which Vendor has collected and provided to the Agency/Buyer for a period of six months following submission of such data to Agency/Buyer. During this six-month warranty period, at no cost to Agency/Buyer, Vendor shall be responsible for correcting any errors or omissions discovered by the Agency/Buyer for each work area surveyed. Agency/Buyer shall submit a list of all errors and omissions found within 90 days from receipt of each completed work area survey. Vendor shall be required to resolve all errors and omissions within 90 days of receipt of each errors/omissions list from Agency/Buyer.

2.2.3 Vendor must develop a data collection system that enables them to provide data to Agency/Buyer in a format that will import into the Agency/Buyer's current database structure. Vendor has supplied a Data Collection Plan utilizing electronic input of data in the field.

2.3 Field Inventory of Crossings:

2.3.1 Vendor plan shall provide sufficient manpower, equipment and materials to survey, collect and catalogue data in a timely manner for approximately 8,400 public grade crossings over a 5-year period. Existing highway/rail grade crossings shall be surveyed in accordance with the schedule shown in Section 2.11.1, below. Information to be collected on each public grade crossing is outlined in Section 2.12. The crossing data shall be recorded and stored in a format compatible with a SQL database. [**NOTE:** Agency/Buyer shall provide Vendor with a copy of Agency/Buyer's existing crossing database for use as a reference to identify crossing locations.]

2.3.2 Vendor shall deliver both electronic and printed versions of the updated database, location sketches and photographs collected to the Agency/Buyer. Vendor shall also deliver an electronic summary file that includes all information collected for each crossing, the date when the data for each crossing was collected, and the date when QA/QC was completed.

2.3.3 Vendor shall deliver a sample in electronic and printed form of field collected data including ground photographs from a minimum of 20 crossings each year within three months of the start of the field collection work. This submittal is part of the Agency/Buyer's approval process.

2.4 Location Sketches of Crossings:

2.4.1 Vendor shall provide sufficient manpower, equipment and materials to prepare "Plan View" location sketches for each crossing inspected under this project. Information to be included on each location sketch is outlined in Section 2.12. All location sketches shall be produced in a manner compatible with a SQL database.

2.4.2 Use of engineering graphic software is recommended for preparation of Plan View location sketches for each crossing and grade separation structure surveyed under this project. Information to be included on each location sketch is outlined in Section 2.12. The submittal of a prototype location sketch to demonstrate the format and appearance of the location sketch and Agency's approval of the prototype location sketch must be completed in six months after the start of the contract. Use of another type of software program maybe considered only after the submittal of a prototype sketch developed with the software and approval by the Agency/Buyer.

2.4.3 Vendor shall deliver in electronic and printed form location sketches for the sample of crossings submitted as required in Part 2.3.3 of this section for Work Years 2 – 5 within three months of the start of the field collection work. In Work Year 1, submittal of location sketches for the sample crossing is required within one month after the approval of the prototype sketch. This submittal is part of the Agency/Buyer's approval process.

2.5 Photography of Crossings:

2.5.1 Vendor shall provide sufficient manpower, equipment and materials to collect a minimum of eight (8) ground photographs at each highway/rail grade crossing location in digital format. All ground photographs for grade crossings shall include a photo of the Crossing Number. If no Crossing Number is present at the crossing, Vendor shall write the number on a tablet and take a photograph of the tablet at the crossing. Ground photographs shall also include the perspective of all highway approaches and both railroad approaches, and a view of the existing crossing surface. All grade crossing ground photos shall be identified in a manner that will allow for a quick interpretation of each picture (e.g., "North Highway Approach, looking South"). The ground photographs shall be processed in a manner to control the file size of each photograph, not to exceed 1 megabit. The display of the time and date on the photograph shall be included on all photographs for this contract.

2.5.2 The Agency/Buyer shall provide the aerial photographs to the Vendor. The source of the aerial photographs is from the Illinois Department of Transportation statewide aerial photography project, which is presently underway. From this information, the Vendor will create separate geo-referenced files (.tif and.tfw) for an aerial view of each crossing with the crossing centered in the image. These aerial files will be part of the deliverables. The aerial photographs are to be incorporated as the background for the Plan View portion of the location sketches. Photography for Work Years 1 – 4 will be done on black and white film with a resolution of 1.5' x 1.5' gsd per pixel. Photography for Work Year 5 will be done on color film with a resolution of 1' x 1' gsd per pixel. Further information on the aerial photography can be found at the following internet link http://www.isgs.uiuc.edu/nsdihome/ISGSindex.htmll. It is

anticipated that the aerial photographs for Work Year 1 will be available to the Vendor on or before November 1, 2006. For the remaining Work Years, the anticipated delivery of the aerial photographs to the Vendor is on or before September 1 of each work plan year.

2.5.3 Vendor shall catalog all photographs (ground and aerial photos) taken by location (crossing number, railroad milepost, highway/street name, etc.). (Information to be included on each photograph is outlined in Section 2.12) All photographs shall be recorded and stored with crossing identification information in a manner compatible with an SQL database.

2.6 GPS Coordinates. Vendor must provide GPS coordinates (Latitude and Longitude) for all highway/rail grade crossings. The accuracy of the GPS coordinates shall be within 1 second (+/- tolerance of 20 feet). GPS coordinates shall be provided in decimal degrees as well as degree/minute/second format.

2.7 Other Vendor Requirements:

2.7.1 Vendor shall apply professional experience, analysis and judgment. URS scope is limited to a survey of existing conditions, and that URS does not make any representation or warranty regarding safety of the grade crossings.

2.7.2 Vendor shall consult with the Staff on Overall Project Management, Development of Data Collection Procedures, etc. (This task may entail some travel to Springfield, Illinois)

2.7.3 Vendor shall make qualified personnel available to explain and discuss Vendor's work products referenced above, as needed by Agency/Buyer. This task may entail some travel to Springfield, Illinois.

2.7.4 As required, Agency/Buyer will assist Vendor in obtaining access to each railroad company's property to enable Vendor to perform the work described herein. Vendor will be required to indemnify railroad companies for any negligent acts which may occur during the time Vendor's employees (or Vendor's subcontractor's employees) are on railroad property.

2.7.5 At some crossings to be surveyed, security may be required for Vendor field crews in certain areas. The cost of providing security for field crews will be paid solely by Vendor and is not subject to reimbursement by Agency/Buyer.

2.7.6 For the field data collection, the Vendor will utilize a one-man crew using 3D Laser Scan equipment as noted in their RFP. By utilizing the 3D Laser Scan equipment, the Vendor's field crews exposure to vehicular and rail traffic is greatly reduced. It is the Agency/Buyer's intent that the 3D scanning equipment will be mounted on a vehicle and scans will be performed outside the

highway travel lanes. If the scanning operation encroaches on a travel lane, all efforts must be made by the Vendor to protect Vendor personnel and equipment and not hinder the safe movement of vehicular traffic on the roadway. The crew size at each crossing will be determined on factors relating to the safe operation of the data collection. Planning phase of field surveys and/or an actual field visit to a crossing shall determine the necessary size of the crew. In areas where a one-man crew will not be sufficient to collect the data required the Vendor will assign a second person to assist with the data collection.

The following are the Vendor's generalized field procedure for data collection with 3D scanning

- Utilize advance warning signs
- Place 3D scan equipment for first scan
- Take ground photographs and place reflective markers
- Take GPS reading
- Place scan targets
- Perform scan
- If necessary, relocate for additional scan(s) and perform scan(s)
- Complete computerized data entry form
- Retrieve targets, markers and signs.

If restrictive or no parking areas prevent the Vendor from positioning its vehicle at the proper location to utilize the 3D scanning equipment, Vendor will arrange with local officials for a temporary parking permit or utilize a tripod to set up the 3D scanning equipment in the correct location to collect the required data. If a tripod must be used to set up the 3D scanning equipment in the correct location to collect the required data, the Vendor will determine if a 2nd person is required to guard the equipment.

In the event that the 3D Laser Scan equipment becomes inoperable and the field work schedule is adversely impacted, Vendor will either rent a replacement scanner or utilize a 3-man crew to collect the required data until the equipment can be repaired or replaced. Use of a rental scanner or a 3-man crew to collect the required data will result in no additional cost to the Agency/Buyer. The purpose of the 3-man crew is for safety while working under the presence of vehicular and rail traffic. If the inoperable 3D Laser Scan equipment cannot be repaired or replaced with comparable equipment, Vendor will be required to continue to use a 3-man crew to collect the required data.

2.8. Milestones and Deliverables

2.8.1 Project Start/End Date. This Contract shall begin on execution and shall end December 31, 2011 (**NOTE:** This Contract end date

represents a five-year project duration, plus a six-month warranty period for work performed during Year 5 of the project.), except that any provisions relating to liability and insurance, and confidentiality concerning the subject matter of the Contract, shall survive the end date of the Contract. Each work plan year with the exception of Year 1, for the purpose of definition, shall begin at the start of the Agency's fiscal year (July 1st) and shall end 365 days thereafter, except Year 2 work, which shall end after 366 days. The time period for the first year of this Contract shall begin upon execution of the contract and shall end 365 days thereafter.

2.8.2 Milestones/Deliverables. Shown below are timelines and deliverables associated with this Contract. The timelines are subject to change at the discretion of the Agency/Buyer. Monthly reports required in this paragraph shall be delivered to the Agency/Buyer during the first week of each month covered by this Contract.

August 15, 2006	Anticipated execution date of the Contract. Vendor begins work for Year 1 of Work (See Section 2.11.1), and prepares for consultation with Agency/Buyer Staff on Year 1 work.
Late August 2006	Initial project consultation held with Agency/Buyer Staff in Springfield, Illinois two weeks after contract execution. The Vendor must show that all file formats, databases, and import processes are consistent will the current file formats, databases, and import processes. (See Section 2.12)
July 2006 thru June 2007	Written monthly progress reports for Year 1 work, submitted to Agency/Buyer Staff at the end of each month.
November 2006	Quarterly Project Meeting with Agency/Buyer Staff.
February 2007	Quarterly Project Meeting with Agency/Buyer Staff.
May 2007	Quarterly Project Meeting with Agency/Buyer Staff.
August 14, 2007	Delivery of Crossing Information for Work Area assigned in Year 1. (Deliverables are outlined in Section 2.11.1 and Section 2.12),
July 1, 2007	Vendor begins work for Year 2 of Work (See Section 2.11.1), and prepares for consultation with Staff on Year 2 work.
Mid – July 2007	Consultation with Agency/Buyer Staff in Springfield, Illinois.
July 2007 thru	Written monthly progress reports for Year 2 work, submitted to
June 2008	Agency/Buyer Staff at the end of each month.
October 2007	Quarterly Project Meeting with Agency/Buyer Staff.
January 2008	Quarterly Project Meeting with Agency/Buyer Staff.
April 2008	Quarterly Project Meeting with Agency/Buyer Staff.
June 30, 2008	Delivery of Crossing Information for Work Area assigned in Year 2. (Deliverables are outlined in Section 2.11.1 and Section 2.12)

July 1, 2008	Vendor begins work and preparing for initial consultation with Agency/Buyer Staff for Year 3 of Work. (See Section 2.11.1)
Mid – July 2008	Consultation with Agency/Buyer Staff in Springfield, Illinois.
July 2008 thru June 2009	Written monthly progress reports for Year 3 work, submitted to Agency/Buyer Staff at the end of each month.
October 2008	Quarterly Project Meeting with Agency/Buyer Staff.
January 2009	Quarterly Project Meeting with Agency/Buyer Staff.
April 2009	Quarterly Project Meeting with Agency/Buyer Staff.
June 30, 2009	Delivery of Crossing Information for Work Area assigned in Year 3. (Deliverables are outlined in Section 2.11.1 and Section 2.12)
July 1, 2009	Vendor begins work and preparing for initial consultation with Agency/Buyer Staff for Year 4 of Work. (See Section 2.11.1)
Mid – July 2009	Consultation with Staff in Springfield, Illinois.
July 2009 thru June 2010	Written monthly progress reports for Year 4 work, submitted to Agency/Buyer Staff at the end of each month.
October 2009	Quarterly Project Meeting with Agency/Buyer Staff.
January 2010	Quarterly Project Meeting with Agency/Buyer Staff.
April 2010	Quarterly Project Meeting with Agency/Buyer Staff.
June 30, 2010	Delivery of Crossing Information for Work Area assigned in Year 4. (Deliverables are outlined in Section 2.11.1 and Section 2.12)
July 1, 2010	Vendor begins work and preparing for initial consultation with Agency/Buyer Staff for Year 5 Work. (See Section 2.11.1)
Mid – July 2010	Consultation with Agency/Buyer Staff in Springfield, Illinois.
July 2010 thru June 2011	Written monthly progress reports for Year 5 work, submitted to Agency/Buyer Staff at the end of each month.
October 2010	Quarterly Project Meeting with Agency/Buyer Staff.
January 2011	Quarterly Project Meeting with Agency/Buyer Staff.
April 2011	Quarterly Project Meeting with Agency/Buyer Staff.
June 30, 2011	Delivery of Crossing Information for Work Area assigned in Year 5. (Deliverables are outlined in Section 2.11.1 and Section 2.12)

2.9 Reporting, Status and Monitoring Specifications

The Vendor shall provide monthly status reports on the progress of the Contract. Vendor is expected to meet with Agency/Buyer Staff at a minimum on a quarterly basis. If Vendor encounters any unusual or unforeseen conditions during the execution of the work, the Vendor shall contact as soon as possible the Agency/ Buyer's contact person or other designee regarding the situation with appropriate documentation.

2.9.1 Contract Monitoring

2.9.1.1 Vendors are responsible for the faithful performance of the contract and shall have internal monitoring procedures and processes to ensure compliance.

2.9.1.2 The State reserves the right to monitor and track Vendor's performance over the course of the contract including any warranty term. The information gathered may be used in administration of the contract including payment, and may be used when evaluating the vendor in future procurements.

2.9.1.3 In appropriate circumstances, the State and the Vendor will work together to develop a performance scorecard with conditions, milestones, requirements, or timetables that must be met before additional steps may be taken or payment is due. The scorecard may additionally record matters related to price, service, quality and other factors deemed important.

2.9.1.4 The Vendor shall cooperate with the State in this monitoring and tracking activity, which may require that vendor report progress and problems (with proposed resolutions), provide records of its performance, allow random inspections of its facilities, participate in scheduled meetings and provide management reports as requested by the State.

2.9.1.5 The State expects to have quality vendors who are willing to work with us during the term of the contract to provide us with better quality at the same price, or to provide the same quality at a lower price. We may consider, in future procurement evaluations, a vendor that successfully provides better quality or price.

2.10 Staffing Specifications

2.10.1 Education. Vendor and/or at least one member of Vendor's Staff possess a bachelor of engineering degree from an appropriately accredited university or college and are registered as a professional engineer in the State of Illinois.

2.10.2 Technical Ability. Vendor and/or at least one member of Vendor's Staff possess experience in the area of railroad engineering. Vendor has demonstrated to Agency/Buyer's satisfaction that Vendor has a record of success in railroad crossing and roadway construction, project management and designing complex databases. At least one member of Vendor's Staff possesses registration as professional land surveyor in the State of Illinois.

2.11 Where Services are to be Performed

2.11.1 Each year, over a 5-year period, Vendor will survey up to approximately one-fifth of all public grade crossings in a specific locale of the state. (**NOTE:** For this Contract, the term "**survey**" refers to the collection of all data required in Section 2.12 for each crossing). Also at the direction of the Agency/Buyer's Transportation Division Staff, Vendor will be required to provide data (inventory information, ground photos, aerial photos, location sketches and GPS Coordinates.) for new grade crossings, as well as all grade crossings where warning devices have been changed within the previous five years. Tentative yearly assigned work areas are outlined below. However, Agency/Buyer shall retain the

right to modify the work areas or survey sequence during the 5-year life of this Contract.

Contract Year	Work Area
1	Adams, Cass, Christian, Clark, Clay, Coles, Crawford, Cumberland, Effingham, Fayette, Hancock, Jasper, Lawrence, Logan, Macon, Macoupin, Mason, Menard, Montgomery, Morgan, Moultrie, Pike, Richland, Sangamon, Schuyler, Scott, Shelby (1,699 crossings as of July 2006)
2	Alexander, Bond, Clinton, Edwards, Franklin, Greene, Hamilton, Jackson, Jefferson, Jersey, Johnson, Madison, Marion, Massac, Monroe, Perry, Pulaski, Randolph, Saline, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson (1,609 crossings as of July 2006)
3	Champaign, De Witt, Douglas, Edgar, Fulton, Henderson, Knox, Marshall, McDonough, McLean, Peoria, Piatt, Putnam, Stark, Tazewell, Vermilion, Warren, Woodford (1,655 crossings as of July 2006)
4	Boone, Bureau, Carroll, De Kalb, Ford, Grundy, Henry, Iroquois, Jo Daviess, Kankakee, Kendall, La Salle, Lee, Livingston, Ogle, Rock Island, Stephenson, Whiteside, Winnebago (1,773 crossings as of July 2006)
5	Cook, Du Page, Kane, Lake, McHenry, Will (1,654 crossings as of July 2006)

Note: Number of crossings shown in Work Years 2 through 5 represents the number of open at grade crossings at the beginning of this contract. The number of crossings assigned in Work Years 2 through 5 will likely vary depending on the number of open grade crossings in the assigned area at the beginning of the Work Year.

[1] Includes all public highway/rail grade crossings, including those owned by METRA. This project **does not include** those public grade crossings owned by the Chicago Transit Authority (CTA). [AGENCY shall provide VENDOR with a copy of AGENCY's existing crossing database for use as reference to identify crossing locations.]

2.11.2 Work Location Disclosure: Vendor has disclosed that the location where the services will be performed is in their Decatur, Illinois and St. Louis, Missouri offices.

If any work identified for performance in the United States is moved to another country, such action may be deemed a breach of the contract.

2.12 Other Specifications - Data Collection Requirements

2.12.1 The following information shall be included on data collection forms: (Note: As indicated in Vendor's RFP, the Vendor proposed the use of 3D Laser Scanning Technology ("3D Scanning") to collect the dimensional data required below. The use of this technology is authorized.)

2.12.1.1 Date and Time – Record date and time of data collection.

2.12.1.2 Location - Verify the *community* where each crossing is located, or the *nearest community* to the crossing. Verify the *Township and County* where each crossing is located.

2.12.1.3 Street or Highway Name – Verify the name of the street or roadway where the crossing is located as shown in the ICC database. If other street/road names such local 911 designated names are found posted along the roadway, record these names.

2.12.1.4 Roadway Surface Type – Note whether the roadway is paved. Record the type of surface on each roadway where the crossing is located. The list of acceptable surface descriptions shall include: Dirt Path; Gravel; Brick, Oil/Chip; Bituminous; Concrete.

2.12.1.5 Roadway Width - Identify the overall width of the roadway adjacent to the crossing approximately 25 feet away from the edge of the crossing on each approach). Measurements shall be taken to the nearest ½ foot. If the roadway section includes curb & gutter, measurements shall be back-to-back of curb. If roadway section does not include curb & gutter, measurements shall be width of roadway surface. Sidewalks that extend over the railroad tracks within the roadway's right-of-way shall be documented as to the number of sidewalks and the direction from the centerline of the roadway at each crossing where present.

2.12.1.6 Grade Change of Highway Approaches - Measure the grade change of the roadway leading to all at grade crossings. The measurement of grade change on roadway approaches shall be taken to the nearest 0.1 foot. All measurements shall be taken with a level and rod or obtained through use of 3D Scanning. Measurements shall be taken on both approaches at centerline of the roadway at the following locations: edge of the crossing surface (2 feet from the rail), 25 feet from the edge of the crossing surface, 50 feet from the edge of the crossing surface, and 100 feet from the edge of the crossing surface. At multiple track crossings, elevation measurements will be taken at the edge of the crossing surface between the tracks. If at multiple track crossings the distance between the tracks exceeds 50 feet, an

elevation measurement will be taken at the midpoint. If a highway-highway intersection is located within 100 feet of the crossing, the location of the edge of pavement for the side street at the centerline of the crossing roadway will be used as the last elevation point for the approach. Elevation measurements shall be relative to measurement at the crossing. One edge of the crossing surface shall be considered a datum point with an elevation of 100.0 feet.

2.12.1.7 Crossing Inventory Number – Verify the AAR/USDOT Inventory ("DOT Number") number assigned to each crossing. (Note: The DOT Number, comprised of 6 numbers and 1 alpha letter, is required to be clearly displayed at each crossing. The DOT Number is normally located on the mast of a crossing warning device. It is sometimes also located on the side of a crossing signal cabinet, adjacent to the grade crossing.

2.12.1.8 Railroad Company – Record the name of the railroad company if shown at the crossing. The name should be displayed with the crossing inventory number.

2.12.1.9 Number of Tracks - Identify the number of tracks located in a grade crossing.

2.12.1.10 Track Centers - If multiple tracks are located at a crossing, measure the distance between track centers. Measurements shall be to the nearest ½ foot. (Note: If the roadway crosses the tracks at an angle less than 90^0, track centers shall be measured perpendicular to the track rails near the centerline of the roadway where possible.)

2.12.1.11 Crossing Description - Provide a description of the existing crossing surface. Each crossing surface shall be described using one of the following options. At crossings with multiple tracks if there is a difference in surface type, note each type of surface present:

- *Unconsolidated* - Crossing surface comprised of unconsolidated stone or gravel
- *Wood Plank/Asphalt* - Wood headers installed adjacent to both rails, between rails (gauge side) and outside of each rail (field side), with consolidated bituminous asphalt installed between gauge side header boards; If crossing contains multiple tracks, the area between field side header boards is also filled with consolidated bituminous asphalt.
- *Asphalt and Flange* – Metal flanges installed adjacent to both rails, between rails (gauge side) and outside of each rail (field side), with consolidated bituminous asphalt installed between gauge side header boards; If crossing contains multiple tracks, the area between field side metal

flangeways is also filled with consolidated bituminous asphalt.

- *Timber* - Crossing surface is constructed completely of solid wood planks.
- *Rubber* - Crossing surface constructed of solid rubber panels.
- *Concrete* - Crossing surface constructed of pre-cast concrete panels.
- *Concrete and Rubber* –
- *Metal* –
- *Other* –

2.12.1.12 Crossing Width – Measure and record the overall width of the crossing surface proper for every set of tracks in the crossing. Measurements, to the nearest ½ foot, shall be taken from the outside edge to outside edge of the crossing surface and parallel to the rails. If a pedestrian crosswalk is located on one side, or both sides, of the roadway crossing, and the crossing surface was constructed to include the pedestrian crossings, the width of the entire crossing shall be measured. If a pedestrian crosswalk is located on one side, or both sides, of the roadway crossing, but the roadway-crossing surface does not extend out to include the pedestrian crossings, the width of the roadway crossing surface and the width of each pedestrian crossing surface shall be taken separately.

2.12.1.13 Warning Devices - Identify the type and number of warning devices located at each grade crossing. Identify the crossing quadrants where the warning devices are located. The types of warning devices include:

- Standard Crossbuck Signs, R15-1 (X-Bucks)
- Highway Stop Signs, R1-1 with Crossbuck Signs (Stop Signs)
- Yield Signs, R1-2 with Crossbuck Signs (Yield Signs)
- Bells
- Automatic Flashing Light Signals (AFLS)
- Cantilevered Automatic Flashing Light Signals – over traffic (Cant AFLS- ovr)
- Cantilevered Automatic Flashing Light Signals – not over (Cant AFLS - not)
- Automatic Flashing Light Signals and Gates (AFLS/Gates)

- Cantilevered Automatic Flashing Light Signals and Gates – over traffic (Cant AFLS/Gates - ovr)
- Cantilevered Automatic Flashing Light Signals and Gates – not over (Cant AFLS/Gates - not)
- Other - Any Crossing Warning Device not noted above

2.12.1.14 Warning Device Components - For each warning device in Section 2.12.1.13, above, Vendor should refer to the *Manual of Uniform Traffic Control Devices* to ensure an accurate description. Also for each warning device in Section 2.12.1.13, above, Vendor must inventory the components of the warning devices at each crossing as noted in Part III of the US DOT Crossing Inventory Form (Form FRA F6180.7).

Determine if sidelights are present at the crossing. A sidelight is a pair of flashing light signals that are focused toward traffic on parallel roadways near the crossing. These lights can be mounted on the same mast as the other flashing light signals or on a separate mast. Record how many pair of flashing light signals are sidelights.

Note the presence of pedestrian gates at the crossing. Pedestrian gates only extend over a sidewalk or bicycle path. Record the number of pedestrian gates at the crossing.

Note whether a crossing is equipped with a four-quadrant gate system. A four-quadrant gate system will have a gate installed on both the entrance and exit sides of a crossing in each direction of vehicular travel.

Record the presence of all other traffic signs located adjacent to the crossing. Such signs would include: Number of Tracks (R15-2), Emergency Notification Sign (I-13 or I-13a), and other warning or regulatory signs. Note the number of each type of traffic sign located near the crossing.

2.12.1.15 Crossing Angle - Provide the angle of intersection between the roadway and the railroad at the grade crossing. Measurements shall be made to the nearest 5 degrees.

2.12.1.16 Parallel Roadways - Identify all parallel public roadways located within 500 feet of each grade crossing. Measure and record the distance between the nearest edge of the roadway(s) and the nearest rail of the crossing (measurements shall be to the nearest foot), indicate the direction each parallel roadway is from the crossing. Note the type of traffic control present at each intersection. If the intersection traffic control is a two-way stop operation, indicate the roadway under stop sign control.

2.12.1.17 Interconnected Crossings – Identify locations where another crossing exists within 200 feet of the crossings along the roadway that is intersecting the crossing. Record the crossing inventory number of the adjacent crossing and indicate the type of warning devices present at the adjacent crossing. Measure the distance between the crossings (near rail to near rail). Measurements shall be to the nearest foot. Note the direction the adjacent crossing is located from the crossing.

2.12.1.18 Advance Warning Signs - Verify the presence of advance warning signs at each grade crossing. The following information shall be collected:

The number of advance warning signs (W10-1) along the highway approaches to the crossing. Where parallel roadways are adjacent (within 100 feet) to a crossing, check for the presence and number of advance warning signs (W10-2, W10-3, W10-4) located on either side of the intersection along the parallel road and note the name of the parallel roadway.

Check at the advance warning signs for supplemental signs that indicate a quiet zone, such as a W10-9. Note the crossings where the quiet zone signs are present.

2.12.1.19 Other Roadway Information - Identify the following items (if applicable):

- *Center Median/Channelization* - Identify the dimensions (width and length in feet, to nearest foot) and type of construction (PCC, bituminous asphalt, plastic, etc.) for each center median/median separator located adjacent to a grade crossing.
- *Pavement Markings* - Record whether stoplines by the warning devices and/or advance highway-rail grade crossing pavement markings (See Section 8B.16 of the Manual on Uniform Traffic Control Devices (MUTCD) are present at each crossing location. Record whether the crossing location has diagonal pavement markings present between the crossing and a highway intersection.

2.12.1.20 Special Conditions - Provide information on any special conditions encountered at grade crossings. "Special Conditions" shall be defined as any situation that would change the designation of a crossing or conditions at the crossing that would prevent the collection of some of the inventory data. Photographs depicting the condition must be taken for documentation. Choices of Special Conditions shall include:

- Crossing Closed (Barricades across the roadway; no access over the track)

- Track Abandoned / No Crossing (Tracks removed) - No Warning Devices Present
- Track Abandoned / No Crossing (Tracks removed) - Warning Devices Still in Place
- Track Abandoned / No Crossing (Tracks removed) - Bike Path Now in Place
- Road Closed
- Roadway and/or Crossing Under Construction
- Track Abandoned / Crossing Present

2.13 Plan View Location Sketches are required on all assigned crossings.

2.13.1 Each location sketch shall include the following items:

- Location (City, Street Name) and all streets shown on plot.
- DOT/AAR Inventory Number
- Railroad Milepost
- Number of Tracks
- Track Centers
- Type and Location of Warning Devices
- Roadway Width
- Crossing Width
- Intersecting Roadways (Name of Roadway, Distance & Direction from Crossing, Type of Traffic Control)
- Geographical Orientation (North Arrow)
- Crossing Angle (Angle of Intersection between roadway and railroad track(s).
- Information on highway approach grade changes.
- Scale for the location sketch.

2.13.2 Each location sketch shall be prepared using the aerial photograph for each crossing as the background, with the information listed above overlaid using engineering graphic software.

2.14 Photographs. A minimum of eight photographs shall be taken for each grade crossing. The following information describes how the photographs are to be taken.

2.14.1 All ground photographs for grade crossings shall include a photo of the Crossing Number. If no Crossing Number is present at the crossing, Vendor shall write the number on a tablet and take a photograph of the tablet at the crossing location. Ground photographs shall also include the

perspective of all highway approaches and both railroad approaches, and a view of the existing crossing surface. All grade crossing ground photos shall be identified in a manner that will allow for a quick interpretation of each picture (e.g., "North Highway Approach, looking South"). Photographs shall be taken from the driver's perspective at a location) approximately twenty five feet (25') from the edge of the crossing (location of the "Stop Bar"). Photos depicting the driver looking down the track in both directions shall be taken from each highway approach (2 photos per highway approach). Photos shall show the following information: rail/highway intersection (i.e., crossing surface), warning devices, and any sight obstructions (if applicable). Photos shall also be taken from each roadway approach looking toward the crossing at a point approximately 100 feet from the crossing (1 photo per highway approach). The location from where each photograph was taken shall be identified, to the nearest five feet. All photos shall be identified in a manner that will allow for a quick interpretation of each picture (e.g., "North Highway Approach, looking South"). The ground photographs for each crossing shall be arranged in a standardized sequence that must be approved by the Agency prior to the start of any field surveying.

2.15 Information Exchange Requirements. The Vendor must meet the following information exchange requirements:

2.15.1 File Format. Vendor must submit all files including location sketches, aerial photography, and ground level photography in a format consistent with the current location sketches, aerial photography, and ground level photography.

2.15.2 File Name Convention. Vendor must submit all files including location sketches, aerial photography, and ground level photography using the file naming convention of the current location sketches, aerial photography, and ground level photography.

2.15.3 Database Import. Vendor must provide import data in a file format that will import into the Agency/Buyer existing system's current database structure.

2.15.4 Database Version. Vendor must submit database files using Microsoft SQL Server 2005 file format or an alternate version of Microsoft SQL Server as specified by the Agency/Buyer.

2.15.5 Engineering Graphic Software Version. The vendor will be using MicroStation V8. Any changes to this software platform must be agreed to by the Agency/Buyer.

2.15.6 Medium. Vendor must submit database sketches and photographs to the Agency/Buyer on single sided DVD-R and on an external hard drive provided to vendor by Agency/Buyer.

2.15.7 Organization. Vendor must submit all data to the Agency/Buyer organized in a manner specified by the Agency/Buyer.

2.15.8 Duplication. Vendor must submit three copies of each DVD to the Agency/Buyer unless otherwise specified by Agency/Buyer. Vendor will provide, at Agency/Buyer request, 1 copy of all raw data from 3-D laser scans and appropriate viewer software from scanner manufacturer on an external hard drive provided to the Vendor by Agency/Buyer.

2.15.9 Web Access. Vendor will develop a secure web (Internet) portal to share project data with Agency/Buyer during the course of the project. The portal will allow Agency/Buyer personnel to search the rails data and pictures in vendor possession. Agency/Buyer will have read-only access to the rail crossing data.

2.15.10 Custom Applications. Vendor will develop customized data entry software for Microsoft Pocket PC 4.x and Windows Mobile 5.x hand-held PDAs. Vendor will provide all source code for customer applications in this section and in section 2.15.9 to Agency/Buyer at the end of the project.

3. PRICE

Maximum Compensation for Services. Over the life of this CONTRACT, compensation for professional services shall not exceed $1,879,287. This contract will include estimated annual totals as follows:

Work Plan Year 1 -	$303 per crossing- 1699 estimated crossings
Work Plan Year 2-	$185 per crossing- 1609 estimated crossings
Work Plan Year 3 -	$184 per crossing- 1655 estimated crossings
Work Plan Year 4 -	$193 per crossing- 1773 estimated crossings
Work Plan Year 5 -	$254 per crossing- 1654 estimated crossings

The estimated number of crossings per work plan year is an estimate. Over the course of this contract, the number of crossings could increase or decrease according to order of the Illinois Commerce Commission. The Agency will pay the Vendor the agreed upon per crossing fee for the number of crossings assigned per work plan year.

If annual funding for this Contract is significantly reduced for any reason (by 20% or more), an adjustment in the per crossing cost for the work plan year affected will occur. The per crossing cost will be increased by 10% if the reduction in funding is 20% and additional adjustments of 5% (non-compounding) will be made for each 10% interval of funding reduction thereafter for that work plan year.

4. TERMS AND CONDITIONS

This section contains the State's standard terms and conditions for all contracts. These terms and conditions will govern this contractual relationship and the Vendor is bound by them and is responsible for reading and understanding them. The State reserves the right to amend these terms and conditions when and where needed and to supplement them with any appropriate addendum, as noted herein.

4.1 BILLING AND PAYMENT

4.1.1 **BILLING:** The Agency/Buyer's billing practices are set out as follows and Vendor is presumed to have read and understands the following procedures:

4.1.1.1 Vendor shall submit invoices to the address, on the schedule and with the detail required by the ordering Agency/Buyer. Invoices for equipment and/or supplies purchased and/or services performed and expenses incurred prior to July 1st must be presented to the Agency/Buyer no later than July 31; otherwise Vendor may have to seek payment of such invoices through the Illinois Court of Claims **(30 ILCS 105/25).** Billings shall be made to conform to State fiscal year requirements, including prorating if necessary, notwithstanding any contrary provision in this Contract or order.

4.1.1.2 Vendor shall not bill for any taxes unless a statement is attached to the bill identifying the tax and showing why it is legally chargeable to the State. The State does not warrant the interest component of any payment, including installment payments, are exempt from income tax liability.

4.1.1.3 By submitting an invoice Vendor certifies that the equipment, supplies and/or services provided meet all requirements of the Contract, and the amount billed and expenses incurred are as allowed in the Contract.

4.1.1.4 Billings should be made in the format prescribed by the agency per work plan year by task with the proportion of the per crossing rate as determined below:

4.1.1.4.1 Work Plan Year 1

Project Management, Annual RR training, Client Meeting	15%
Field Inventory of Crossings	23%
Data Upload, Website Management, Final Deliverables	4%
CADD Drawings, Data Entry from Point Clouds	13%
QA/QC Field, QA/QC Office	6%
One time setup and Equipment	39%

4.1.1.4.2 Work Plan Years 2 through 5

Project Management, Annual RR training, Client Meeting	21%
Field Inventory of Crossings	43%
Data Upload, Website Management, Final Deliverables	7%
CADD Drawings, Data Entry from point Clouds	19%
QA/QC Field, QA/QC Office	10%

4.1.2 PAYMENT:

4.1.2.1 Late payment charges, if any, shall not exceed the formula established in the State "Prompt Payment" Act **(30 ILCS 540/1)** and rules **(74 Ill. Adm. Code 900).** Payments delayed at the beginning of the State's fiscal year (July and August payments) because of the appropriation process shall not be considered a breach.

4.1.2.2 The Agency/Buyer shall not be liable to pay for any equipment and/or supplies provided and/or services rendered, including related expenses subject of this Contract incurred prior to the beginning of the term of this Contract. Any Contract or order labeled "subject to financing" or words to similar effect is subject to the Agency/Buyer obtaining suitable financing.

4.1.2.3 The approved invoice amount will be paid less 5% retainage and previous partial payments for each work year assignment. Final payment for each work year assignment shall be made upon determination by the Agency/Buyer that all requirements under this Contract have been completed; such determination shall not be unreasonably withheld. The final payments will be made subject to adjustment after completion of an audit of vendor's records as provided for in this Contract.

4.1.2.4 Any contract or order requiring payment of financing interest is subject to the interest rate limitation set by law of the greater of 9% or 125% of the G.O. Bond Index **(30 ILCS 305/1).**

4.1.2.5 As a condition of payment, Vendor must pay its employees prevailing wages when required by law (e.g., public works, printing, janitorial, window washing, building and grounds services, site technician services, natural resources services, security guard and food service), and must pay its suppliers and subcontractors providing lien waivers on request **(30 ILCS 500/25-60(b)).** Any stipulation made by Vendor to pay prevailing wages shall be deemed to be incorporated in the

project specifications as if specifically set forth therein **(820 ILCS 130/4(a)).**

4.1.3 **DELAY OF PAYMENT DUE TO VENDOR FAILURE:** If the Agency/Buyer in good faith determines that the Vendor has failed to perform or deliver any service or product as required by this Contract, the Vendor shall not be entitled to any compensation under this Contract until such service or product is performed or delivered. In this event, the Agency/Buyer may withhold that portion of the Vendor's compensation, which represents payment for service or product that was not performed or delivered.

4.1.4 **SET-OFF AGAINST SUMS OWED TO THE VENDOR:** The State may set off any sum owed to the Vendor on account of any debt owed to the State, unless otherwise required by law, in accordance with the State Comptroller Act **(15 ILCS 405)**. The Vendor agrees that this provision constitutes proper and timely notice under the law of setoff.

4.1.5 **AVAILABILITY OF APPROPRIATIONS (30 ILCS 500/20-60):** Agency/Buyer shall use its best efforts to secure sufficient appropriations to fund this CONTRACT. However, the Agency/Buyer's obligations hereunder shall cease immediately, without penalty or further payment being required, if: (a) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation; (b) adequate funds are not appropriated or granted the Agency/Buyer by the Illinois General Assembly or the federal funding source, to allow the Agency/Buyer to operate as required and to fulfill its obligations under the Contract; or (c) funds appropriated are de-appropriated or not allocated, or if funds needed by the Agency/Buyer, at the Agency/Buyer's sole discretion, are insufficient for any reason. Agency/Buyer shall give Vendor notice of insufficient funding as soon as practicable. Vendor's obligation to perform shall cease upon receipt of the notice.

4.2 VENDOR PERFORMANCE AND RESPONSIBILITIES

4.2.1 **CONSULTATION:** Vendor shall keep the Agency/Buyer fully informed as to the progress of matters covered by this Contract. Where time permits and Vendor is not otherwise prohibited from so doing, Vendor shall offer the Agency/Buyer the opportunity to review relevant documents prior to filing with any public body or adversarial party.

4.2.2 **PERFORMANCE REVIEWS:**

4.2.2.1 The State or Agency/Buyer may conduct a post performance review of the Vendor's performance under the Contract. The Vendor shall cooperate with the State or Agency/Buyer in this review, which may require that the Vendor provide records of its performance and billing. Vendor shall provide any required information within 30 days of the Agency/Buyer's request. This post performance review may be used by any State agency in determining whether to enter into other contractual relationships with the Vendor.

4.2.2.2 Vendor shall have and maintain, during the term of this contract, internal procedures and processes to monitor performance to ensure full compliance with the contract. Vendor shall disclose such procedures and processes to the State upon request.

4.2.2.3 At the direction of the State, Vendor and State shall work together to develop a performance scorecard to record relevant facts related to performance as well as establishing conditions, milestones, requirements or timetables that must be met before additional steps may be taken or payment is due.

4.2.3 **AUDIT/RETENTION OF RECORDS (30 ILCS 500/20-65):** Vendor and its subcontractors shall maintain books and records relating to performance of the Contract or subcontract and necessary to support amounts charged to the State under the Contract or subcontract. Books and records, including information stored in databases or other computer systems, shall be maintained by the Vendor for a period of 3 years from the later of the date of final payment under the Contract or completion of the Contract, and by the subcontractor for a period of 3 years from the later of the date of final payment under the subcontract or completion of the subcontract. The 3-year period shall be extended for the duration of any audit in progress during the term. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, the Agency/Buyer, the Inspector General and other governmental entities with monitoring authority, upon reasonable notice and during normal business hours. Vendor and its subcontractors shall cooperate fully with any such audit. Failure to maintain books and records required by this section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the Contract for which adequate books and records are not available to support the purported disbursement. The Vendor shall not impose a charge for audit or examination of the Vendor's books and records. If federal funds are used to pay contract costs, the Vendor must retain its records for five years. If only state funds are involved, three years is sufficient.

4.2.4 **SCHEDULE OF WORK:** Any work performed on State premises shall be done during the hours designated by the State and shall in any event be performed so as to minimize inconvenience to the State and its personnel and minimize interference with the State's operations.

4.2.5 **RESPONSIBILITY FOR AGENTS AND EMPLOYEES:** Vendor shall be responsible for the negligent acts and omissions of its agents, employees and subcontractors in their performance of Vendor's duties under this CONTRACT. Vendor represents that it shall utilize the services of individuals skilled in the profession for which they will be used in performing services hereunder. In the event that the Agency/Buyer determines that any individual performing services for Vendor hereunder is not providing such skilled services, it shall promptly so notify Vendor and Vendor shall replace that individual.

4.2.6 **ASSIGNMENT AND DELEGATION:**

4.2.6.1 This Contract may not be assigned, transferred or conveyed in whole or in part by the Vendor without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Vendor shall be considered an assignment.

4.2.6.2 After notice, the Agency/Buyer may transfer the Contract or payment responsibility to another State Agency, or assign the Contract to a third-party for financing purposes.

4.2.7 USE OF THIRD PARTIES:

4.2.7.1 The Agency/Buyer acknowledges that the Vendor may contract with third parties for the performance of any of the Vendor's obligations under this Contract. However, all subcontracts shall be subject to prior approval by the Agency/Buyer, so the Vendor must obtain the Agency/Buyer's prior written consent before allowing any Third Party to perform any of the Vendor's obligations under this Contract.

4.2.7.2 A Vendor who obtains the Agency/Buyer's prior written consent and subsequently enters into a contract with a Third Party for performance of any of the Vendor's obligations under this Contract remains responsible for all services performed under this Contract. All restrictions, obligations and responsibilities of the Vendor under this Contract shall also apply fully and completely to subcontractors. This includes requiring all subcontractors to submit certifications and disclosures to Agency/Buyer for review and approval upon request. The Agency/Buyer shall have the right to request the removal of a subcontractor from the Contract for good cause.

4.2.7.3 Vendor shall identify in an addendum to the Contract, the names and addresses of all subcontractors utilized by Vendor in the performance of this Contract, together with the anticipated amount of money that each subcontractor is expected to receive pursuant to this Contract. The State may request updated information at any time. For purposes of this section, subcontractors are those specifically hired to perform all or part of the work of this contract or to provide the supplies requested by the State.

4.2.7.4 If Vendor is unable to secure or maintain key personnel named in the Contract to render the services, Vendor shall not be relieved of its obligations to complete performance. Agency/Buyer shall have the option to accept a substitute or to terminate the Contract.

4.2.8 LICENSE: Vendor, directly or through its employees, shall have and maintain any required license. With written consent of the Agency/Buyer, Vendor may meet the license requirement through a subcontractor.

4.2.9 SOLICITATION AND EMPLOYMENT: Vendor shall not employ any person employed by the Agency/Buyer during the term of this Contract to perform any work required by the terms of this Contract. As a condition of this Contract, the Vendor shall give notice immediately to the Agency/Buyer's director if Vendor solicits or intends to solicit for employment any of the Agency/Buyer's employees during the term of this Contract. Agency/Buyer has no authority to contractually refuse to hire Vendor's employees who apply to the State for employment.

4.2.10 FORCE MAJEURE: Failure by either party to perform its duties and obligations will be excused by unforeseeable circumstances beyond its reasonable control, including acts of nature, acts of the public enemy, riots,

labor or material shortages, labor disputes, fire, flood, explosion, legislation, and governmental regulation.

4.2.11 **TAX COMPLIANCE:** Vendor shall be in compliance with applicable tax requirements and shall be current in payment of such taxes.

4.2.12 **COMPLIANCE WITH THE LAW:** The Vendor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations and orders when performing the services under this Contract, including without limitation, all laws applicable to the prevention of discrimination in employment and the use of targeted small businesses as subcontractors or suppliers. The Contractor, its employees, agents and subcontractors shall also comply with all federal, state and local laws regarding business permits and licenses that may be required to carry out the work performed under this Contract.

4.2.13 **ANTITRUST ASSIGNMENT:** Vendor hereby assigns, sells and transfers to the State of Illinois all right, title and interest in and to any claims and causes of action arising under antitrust laws of Illinois or the United States relating to the subject matter of the Contract.

4.3 CONFIDENTIALITY AND WORK PRODUCT

4.3.1 **CONFIDENTIALITY:** Vendor's employees, agents and subcontractors may have access to confidential data maintained by the Agency/Buyer to the extent necessary to carry out its responsibilities under the Contract. As such, the following applies unless agreed to otherwise in writing:

4.3.1.1 Vendor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Agency/Buyer;

4.3.1.2 Vendor shall provide to the Agency/Buyer a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats;

4.3.1.3 Vendor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Vendor in connection with the performance of the Contract;

4.3.1.4 Vendor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract;

4.3.1.5 The private or confidential data shall remain the property of the Agency/Buyer at all times.

4.3.2 **CONFIDENTIAL INFORMATION MAY NOT BE DISSEMINATED:** No confidential data collected, maintained, or used in the course of performance of the Contract shall be disseminated except as authorized by law and with the written consent of the Agency/Buyer, either during the period of the Contract or thereafter. Any data supplied to or created by the Vendor shall be considered the property of the Agency/Buyer. The Vendor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency/Buyer.

4.3.3 **SUBPOENA:** In the event that a subpoena or other legal process is served upon the Vendor for records containing confidential information, the Vendor shall promptly notify the Agency/Buyer and cooperate with the Agency/Buyer in any lawful effort to protect the confidential information.

4.3.4 **REPORTING UNAUTHORIZED DISCLOSURES:** The Vendor shall immediately report to the Agency/Buyer any unauthorized disclosure of confidential information.

4.3.5 **USE OF WORK PRODUCT:** Unless otherwise agreed in writing, the following applies regarding work product created or produced under this Contract:

4.3.5.1 Work product produced under this Contract, including, but not limited to, documents, reports, information, documentation of any sort and ideas, whether preliminary or final, shall become and remain the property of the State and/or Agency/Buyer, including any patent, copyright or other intellectual property rights;

4.3.5.2 With the exception of ideas, all such work products shall be considered works made for hire within the meaning of 17 U.S.C. § 101;

4.3.5.3 To the extent that any portion of such work product is not a work made for hire, Vendor completely and without reservation assigns to the Agency/Buyer all right, title and interest in and to such portion of the work product, as well as all related intellectual property rights, including patent and copyright;

4.3.5.4 Agency/Buyer shall exercise all rights of ownership in all such work product without restriction or limitation, without further compensation to Vendor.

4.3.5.5 Vendor shall not acquire or have any right to use, disclose or reproduce the work product or any equipment, documents, information, media, software, or know-how obtained from the State except to perform this Contract. Nothing herein shall be construed as precluding the use of any information independently acquired by Vendor without such limitation;

4.3.5.6 The ideas, methodologies, processes, inventions and tools (including computer hardware and software where applicable) that Vendor previously developed and brings to the Agency/Buyer in furtherance of performance of the Contract shall remain the property of the Vendor; and

4.3.5.7 Vendor grants to the Agency/Buyer a nonexclusive license to use and employ such software, ideas, concepts, methodologies, processes, inventions and tools solely within its enterprise.

4.3.6 **SURVIVES TERMINATION:** Vendor's obligations regarding Confidential Information and Work Product Usage under this Contract shall survive termination of this Contract.

4.4 INDEMNIFICATION AND LIABILITY

4.4.1 **BY THE VENDOR:** The Vendor agrees to indemnify and hold harmless the State of Illinois and the Agency/Buyer, its officers, employees and agents (appointed and elected) and volunteers from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, and the costs and expenses and reasonable attorneys' fees of other counsel required to defend the State of Illinois or the Agency/Buyer, related to or arising from:

4.4.1.1 Any breach of this Contract;

4.4.1.2 Any negligent, intentional or wrongful act or omission of the Vendor or any agent or subcontractor utilized or employed by the Vendor;

4.4.1.3 Any failure by the Vendor to fulfill the Compliance with the Law provision of this Contract;

4.4.1.4 Any failure by the Vendor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Vendor to conduct business in the State of Illinois;

4.4.1.5 Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right; or

4.4.1.6 Any failure by the Vendor to adhere to the confidentiality provisions of this Contract.

4.4.2 **SURVIVES TERMINATION:** Indemnification obligation of the parties shall survive termination of this Contract.

4.4.3 **LIABILITY:** Vendor agrees to assume, without limitation, all risk of loss and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, relating to bodily injuries to persons (including death) and for loss of, damage to, or destruction of real and/or tangible personal property (including property of the State) resulting from the negligence or misconduct of Vendor, its employees, agents, or subcontractors in the performance of the Contract. Vendor shall assume risk of loss until delivery to the Agency/Buyer's facility. Vendor shall do nothing to prejudice the State's right to recover against third parties for any loss, destruction, or damage to State property, and shall at the State's request and expense, furnish to the State reasonable assistance and cooperation, including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the State in obtaining recovery. Neither party shall be liable for incidental, special or consequential damages.

4.4.4 **LEGISLATIVE CHANGES:** The Vendor herein expressly acknowledges that the Contract and its subject matter are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the terms or subject matter of this Contract, the Vendor shall not hold the Agency/Buyer liable in any manner for the resulting changes. The Agency/Buyer shall use best efforts to provide thirty (30) days' written notice to the Vendor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency/Buyer's right to terminate the Contract pursuant to the termination provisions.

4.4.5 **JOINT AND SEVERAL LIABILITY:** If the Vendor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

4.5 WARRANTIES

4.5.1 **CONSTRUCTION OF WARRANTIES EXPRESSED IN THE CONTRACT WITH WARRANTIES IMPLIED BY LAW:** All warranties made by the Vendor in all provisions of this Contract and the Offer by the Vendor, whether or not this Contract specifically denominates the Vendor's

promise as a warranty or whether the warranty is created only by the Vendor's affirmation or promise, or is created by a description of the materials and services to be provided, or by provision of samples to the Agency/Buyer, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the goods and services provided by the Vendor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

4.5.2 **CONCEPTS, MATERIALS AND WORKS PRODUCED:** Vendor represents and warrants that all the concepts, materials and works produced, or provided to the Agency/Buyer pursuant to the terms of this Contract shall be wholly original with the Vendor or that the Vendor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials and works. The Vendor represents and warrants that the concepts, materials and works and the Agency/Buyer's use of same and the exercise by the Agency/Buyer of the rights granted by this Contract shall not infringe upon any other work, other than material provided by the Contract to the Vendor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Vendor represents and warrants that it is the owner of or otherwise has the right to use and distribute the software, the materials owned by the Vendor and any other materials, works and methodologies used in connection with providing the services contemplated by this Contract

4.5.3 **TO BE PROVIDED IN A PROFESSIONAL MANNER:** Vendor warrants that all services will be performed in a good and professional manner and that all of the services to be performed hereunder will be rendered using sound, professional practices and in a competent and professional manner by knowledgeable, trained and qualified personnel.

4.5.4 **CONFORMITY WITH CONTRACTUAL REQUIREMENTS:** The Vendor represents and warrants that the goods or services will appear and operate in conformance with the terms and conditions of this Contract.

4.5.5 **AUTHORITY TO ENTER INTO CONTRACT:** The Vendor represents and warrants that it has full authority to enter into this Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the Agency/Buyer.

4.5.6 **OBLIGATIONS OWED TO THIRD PARTIES:** The Vendor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Vendor pursuant to this Contract are or will be fully satisfied by the Vendor so that the Agency/Buyer will not have any obligations with respect thereto.

4.5.7 **TITLE TO PROPERTY AND EQUIPMENT:** The Vendor represents and warrants that title to any property assigned, conveyed or licensed to the

Agency/Buyer is good and that transfer of title or license to the Agency/Buyer is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance. Vendor further warrants that it has title to, or the right to allow the State to use, the equipment, supplies and/or services being provided and that the State may use same without suit, trouble or hindrance from Vendor or third parties.

4.5.8 **EQUIPMENT AND SUPPLIES QUALITY:** Unless otherwise agreed, Vendor warrants that all equipment and/or supplies shall be new, unused, of most current manufacture and not discontinued, shall be free of defects in materials and workmanship, shall be provided in accordance with manufacturer's standard warranty and shall perform in accordance with manufacturer's published specifications.

4.5.9 **INDUSTRY STANDARDS:** The Vendor represents and expressly warrants that all aspects of the goods and services provided or used by it shall conform to the standards in the relevant industry in the performance of this Contract.

TECHNOLOGY UPDATES: The Vendor represents and warrants that it shall continually use and integrate the most current and up-to-date technology commercially available.

4.5.11 **SOLICITATION:** The Vendor warrants that no person or selling Agency/Buyer has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

4.6 INSURANCE

4.6.1 **INSURANCE:** Vendor shall maintain public liability, casualty and auto insurance in sufficient amount to protect the State from liability for acts of Vendor and risks and indemnities assumed by Vendor. If Vendor does not have minimum coverage (for bodily injury of $250,000 per person/$500,000 per occurrence, and for property damage, $100,000 per occurrence) Vendor must inform the Agency/Buyer and seek written permission for lesser coverage. Vendor shall carry Worker's Compensation Insurance in amount required by law. Upon request, Vendor shall provide and maintain any bond required by law or the Agency/Buyer. Vendor shall provide copies of certificates of insurance evidencing the coverage described in this paragraph.

4.7 VENDOR STATUS AND QUALIFICATIONS

4.7.1 **BACKGROUND CHECK:** The State may conduct criminal and driver history background checks of Vendor's officers, employees or agents who would directly supervise or physically perform any of the Contract requirements at State facilities. Any officer, employee or agent deemed unsuitable by the State must be replaced immediately.

4.7.2 **LEGAL ABILITY TO CONTRACT:** Vendor certifies it is under no legal prohibition on contracting with the State of Illinois, has no known conflicts of interest and further specifically certifies that:

4.7.2.1 Vendor, its employees and subcontractors will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with

Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this Contract.

4.7.2.2 Vendor is not in default on an educational loan **(5 ILCS 385/3)**.

4.7.2.3 Vendor has informed the director of the Agency/Buyer in writing if he/she was formerly employed by that agency and has received an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, **40 ILCS 5/14-108.3** and **40 ILCS 5/16-133.3**, and acknowledges that contracts made without the appropriate filing with the Auditor General are not payable from the "contractual services" or other appropriation line items. Vendor has not received an early retirement incentive in or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code, **40 ILCS 5/14-108.3** and **40 ILCS 5/16-133.3**, and acknowledges that contracts in violation of Section 15a of the State Finance Act are not payable from the "contractual services" or other appropriation line items **(30 ILCS 105/15a)**.

4.7.2.4 Vendor has not been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor has made an admission on the record of having so bribed or attempted to bribe **(30 ILCS 500/50-5)**.

4.7.2.5 If Vendor has been convicted of a felony, at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business **(30 ILCS 500/50-10)**.

4.7.2.6 If Vendor, or any officer, director, partner, or other managerial agent of Vendor, has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, at least 5 years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the contracting State Agency/Buyer shall declare the contract void if this certification is false **(30 ILCS 500/50-10.5)**.

4.7.2.7 Vendor and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the contracting State Agency/Buyer may declare the contract void if this certification is false **(30 ILCS 500/50-11)** or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt **(30 ILCS 500/50-60)**.

4.7.2.8 Vendor and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use

Tax Act **(30 ILCS 500/50-12)** and acknowledge that failure to comply can result in the contract being declared void.

4.7.2.9 Vendor certifies that it has not committed a willful or knowing violation of the Environmental Protection Act (relating to Civil Penalties under the Environmental Protection Act) within the last five (5) years, and is therefore not barred from being awarded a contract. If the State later determines that this certification was falsely made by the Vendor, the Vendor acknowledges that the contracting State Agency/Buyer may declare the contract void. **(30 ILCS 500/50-14)**

4.7.2.10 Vendor has not paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor has Vendor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract **(30 ILCS 500/50-25)**.

4.7.2.11 Vendor is not in violation of the "Revolving Door" section of the Illinois Procurement Code **(30 ILCS 500/50-30)**.

4.7.2.12 Vendor will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers or employees of the State **(30 ILCS 500/50-40, 50-45, 50-50)**.

4.7.2.13 Vendor will, pursuant to the Drug Free Workplace Act, provide a drug free workplace, and if an individual shall not engage in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the performance of the Contract. This certification applies to contracts of $5000 or more with: individuals; and to entities with twenty-five (25) or more employees **(30 ILCS 580)**.

4.7.2.14 Neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This certification applies to contracts that exceed $10,000 **(30 ILCS 582)**.

4.7.2.15 Vendor has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any State or of the United States **(720 ILCS 5/33E-3, 5/33E-4)**.

4.7.2.16 Vendor complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies **(775 ILCS 5/2-105)**.

4.7.2.17 Vendor does not pay dues to, or reimburse or subsidize payments by its employees for, any dues or fees to any "discriminatory club" **(775 ILCS 25/2)**.

4.7.2.18 Vendor complies with the State Prohibition of Goods from Forced Labor Act, and certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction **(PA 93-0307).**

4.7.2.19 Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12 **(PA 94-0264).**

4.7.3 **CONFLICTS OF INTEREST:** Vendor has disclosed, and agrees it is under a continuing obligation to disclose to the Agency/Buyer, financial or other interests (public or private, direct or indirect) that may be a potential conflict of interest or which would prohibit Vendor from having or continuing the Contract. This includes, but is not limited to conflicts under the "Infrastructure Task Force Fee Prohibition" section of the State Finance Act **(30 ILCS 105/18.40)**, Article 50 of the Illinois Procurement Code **(30 ILCS 500/50)**, or those which may conflict in any manner with the Vendor's obligation under this Contract. Vendor shall not employ any person with a conflict to perform under this Contract. If any conflict under Section 50-13 exists no contract may be issued without an exemption from the Governor pursuant to Section 50-20 of the Illinois Procurement Code. An exemption is necessary if:

4.7.3.1 the person intending to contract with the State, their spouse or child: (i) holds an elective office in Illinois; (ii) holds a seat in the Illinois General Assembly; (iii) is an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority; or holds an appointed position or is employed in any of the offices or agencies of the State government and who receives compensation for such employment in excess of 60% of the salary of the Governor **(currently $90,414.60).** (The conflict of interest threshold of 60% of the Governor's salary set forth in Section 50-13 does not apply to elective office holders, legislators, and officers or employees of the Capital Development Board or the Illinois Toll Highway Authority.);

4.7.3.2 the contract is with a firm, partnership, association or corporation in which a person referenced in 4.7.3.1 above receives more than 7.5% of the total distributable income or an amount in excess of the salary of the Governor **(currently $150,691.00).**

4.7.3.3 the contract is with a firm, partnership, association or corporation in which a person referenced in 4.7.3.1 above, together with their spouse or minor child, receives more than 15% in the aggregate of the total distributable income or an amount in excess of 2 times the salary of the Governor **(currently $301,382.00)** from the firm, partnership, association or corporation.

4.7.4 **INDEPENDENT CONTRACTOR:** The Vendor shall be an independent contractor. Equipment and/or supplies provided and/or services performed

pursuant to this Contract are not rendered as an employee of the Agency/Buyer or of the State of Illinois. Amounts paid pursuant to this Contract do not constitute compensation paid to an employee.

4.7.5 **NOT A JOINT VENTURE:** Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

4.7.6 **NON-DISCRIMINATION:** In compliance with the State and Federal Constitutions, the Illinois Human Rights Act, the U. S. Civil Rights Act, and Section 504 of the Federal Rehabilitation Act, the Agency/Buyer does not unlawfully discriminate in employment, contracts, or any other activity.

4.8 TERMINATION OF CONTRACT

4.8.1 **TERMINATION FOR CAUSE WITHOUT ADVANCE NOTICE:** The Agency/Buyer may terminate this Contract for any of the following reasons effective immediately without advance notice:

4.8.1.1 In the event the Vendor is required to be certified or licensed as a condition precedent to providing services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

4.8.1.2 The Agency/Buyer determines that the actions, or failure to act, of the Vendor, its agents, employees or subcontractors have caused, or reasonably could cause jeopardy to health or safety;

4.8.1.3 The Vendor fails to comply with confidentiality laws or provisions;

4.8.1.4 The Vendor furnished any statement, representation or certification in connection with this Contract or the RFP which is materially false, deceptive, incorrect or incomplete.

4.8.2 **TERMINATION FOR CAUSE WITH NOTICE:** The occurrence of or any one or more of the following events shall constitute cause for the Agency/Buyer to declare the Vendor in default of its obligations under this Contract:

4.8.2.1 The Vendor fails to perform, to the Agency/Buyer's satisfaction, any material requirement of this Contract or is in violation of a material provision of this Contract, including, but without limitation, the express warranties made by the Vendor;

4.8.2.2 The Agency/Buyer determines that satisfactory performance of this Contract is substantially endangered or that a default is likely to occur;

4.8.2.3 The Vendor fails to make substantial and timely progress toward performance of the Contract;

4.8.2.4 The Vendor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Vendor terminates or suspends its business; or the Agency/Buyer reasonably believes that the Vendor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

4.8.2.5 The Vendor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of this Contract;

4.8.2.6 The Vendor has engaged in conduct that has or may expose the Agency/Buyer to liability, as determined in the Agency/Buyer's sole discretion; or

4.8.2.7 The Vendor has infringed any patent, trademark, copyright, tradedress or any other intellectual property right.

4.8.2.8 If there is a default event caused by the Vendor, the Agency/Buyer shall provide written notice to the Vendor requesting that the breach or noncompliance be remedied within the period of time specified in the Agency/Buyer's written notice to the Vendor. If the breach or noncompliance is not remedied by the date of the written notice, the Agency/Buyer may either: (a) immediately terminate the Contract without additional written notice; or, (b) enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

4.8.3 **TERMINATION FOR CONVENIENCE UPON NOTICE:** Following **fifteen (15)** days written notice, the Agency/Buyer may terminate this Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Vendor. Following termination upon notice, the Vendor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for services provided under this Contract to the Agency/Buyer up to and including the date of termination.

4.8.4 **TERMINATION DUE TO LACK OF FUNDS OR CHANGE IN LAW:** The Agency/Buyer shall have the right to terminate this Contract without penalty by giving written notice to the Vendor as a result of any of the following:

4.8.4.1 Adequate funds are not appropriated or granted to allow the Agency/Buyer to operate as required and to fulfill its obligations under this Contract;

4.8.4.2 Funds are de-appropriated or not allocated or if funds needed by the Agency/Buyer, at the Agency/Buyer's sole discretion, are insufficient for any reason;

4.8.4.3 The Agency/Buyer's authorization to operate is withdrawn or there is a material alteration in the programs administered by the Agency/Buyer;

4.8.4.4 The Agency/Buyer's duties are substantially modified.

4.8.5 **VENDOR'S REMEDIES IN EVENT OF TERMINATION BY AGENCY/BUYER:** In the event of termination of this Contract for any reason by the Agency/Buyer, the Agency/Buyer shall pay only those amounts, if any, due and owing to the Vendor for services actually rendered up to and including the date of termination of the Contract and for which the Agency/Buyer is obligated to pay pursuant to this Contract. Payment will be made only upon submission of invoices and proper proof of the Vendor's claim. This provision in no way limits the remedies available to the Agency/Buyer under this Contract in the event of termination. However, the Agency/Buyer shall not be liable for any of the following costs:

4.8.5.1 The payment of unemployment compensation to the Vendor's employees;

4.8.5.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

4.8.5.3 Any costs incurred by the Vendor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

4.8.5.4 Any taxes that may be owed by the Vendor in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

4.8.6 **VENDOR'S TERMINATION DUTIES:** The Vendor, upon receipt of notice of termination or upon request of the Agency/Buyer, shall:

4.8.6.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, any other matters the Agency/Buyer may require;

4.8.6.2 Immediately cease using and return to the Agency/Buyer any personal property or materials, whether tangible or intangible, provided by the Agency/Buyer to the Vendor;

4.8.6.3 Comply with the Agency/Buyer's instructions for the timely transfer of any active files and work product produced by the Vendor under this Contract;

4.8.6.4 Cooperate in good faith with the Agency/Buyer, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and

4.8.6.5 Immediately return to the Agency/Buyer any payments made by the Agency/Buyer for services that were not rendered by the Vendor.

4.9 GENERAL PROVISIONS

4.9.1 **TERM AND RENEWALS:** The length of the Contract, including any renewals, may not exceed that allowed by law pursuant to **30 ILCS 500/20-60** or other applicable statutes. When the term begins on execution, that means the date of final execution by the State. If the commencement of performance is delayed because the Contract is not executed by the State on the start date, the State may change the start date, end date and milestones to reflect the delayed execution. No renewal may be effective automatically. No renewal may be effective solely at the Vendor's option.

4.9.2 **NON-EXCLUSIVE RIGHTS:** This Contract is not exclusive. The Agency/Buyer reserves the right to select other contractors to provide services similar or identical to the Scope of Services described in this Contract during the term of this Contract.

4.9.3 **APPLICABLE LAW:** The terms and conditions of this Contract, including those set forth in any attachment, shall be construed in accordance with and are subject to the laws and rules of the State of Illinois, including, without limitation, the Illinois Procurement Code **(30 ILCS 500)** and the rules promulgated thereunder **(44 Ill. Admin. Code 1)**, the Illinois Freedom of Information Act **(5 ILCS 140)** and the Attorney General Act **(15 ILCS 205)**. The Department of Human Rights' Equal Opportunity requirements **(44 Ill. Admin Code 750)** are incorporated by reference. Any claim against the State arising out of this CONTRACT must be filed exclusively with the Illinois Court of Claims **(705 ILCS 505/1)**. The State shall not enter into binding arbitration to resolve any Contract dispute. The State of Illinois does not waive sovereign immunity by entering into this Contract. Any provision containing a citation to an Illinois statute (cited ILCS) may not contain complete statutory language. The official text, which is incorporated by reference, can be found in the appropriate chapter and section of the Illinois Compiled Statutes. An unofficial version can be viewed at http://www.ilga.gov/legislation/ilcs/ilcs.asp

4.9.4 **ENTIRE CONTRACT:** This Contract, including any attachments or amendments, constitutes the entire agreement between the Parties concerning the subject matter of the Contract. Modifications and waivers must be in writing and signed by authorized representatives of the Parties. Any provision of this Contract officially declared void, unenforceable, or against public policy, shall be ignored and the remaining provisions of this Contract shall be interpreted, as far as possible, to give effect to the Parties' intent. All provisions that by their nature would be expected to survive, shall survive termination of this Contract, including without limitation provisions relating to confidentiality, warranty, ownership and liability. This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

4.9.5 **CONTRACTING AUTHORITY:** Certain contracts must be signed or approved by the Director of the Department of Central Management Services (CMS) before they are binding on the State. In those instances CMS shall not be responsible for costs or funding even though payments may be made through CMS facilities.

4.9.6 **AMENDMENTS:** This Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to this Contract must be in writing and fully executed by the parties.

4.9.7 **THIRD PARTY BENEFICIARIES:** There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State, the Agency/Buyer and the Vendor.

4.9.8 **HEADINGS OR CAPTIONS:** The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

4.9.9 **SUPERSEDES FORMER CONTRACT AGREEMENTS:** This Contract supersedes all prior Contracts or Agreements between the Agency/Buyer and the Vendor for the services provided in connection with this Contract.

4.9.10 **WAIVER:** Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency/Buyer and the Vendor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

4.9.11 **NOTICE:** Any and all notices, designations, consents, Offers, acceptances or any other communication provided for herein shall be given in writing by registered or certified mail, return receipt requested, by receipted hand delivery, by Federal Express, courier or other similar and reliable carrier which shall be addressed to each party as set forth in Section 1 of the Sample Contract for Services, "Agency/Buyer and Vendor Contact Page." Notices by fax must show the date/time of successful receipt. Each such notice shall be deemed to have been provided: (a) at the time it is actually received; or, (b) within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or, (c) within five (5) days after it is deposited the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

4.9.12 **CUMULATIVE RIGHTS:** The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

4.9.13 **SEVERABILITY:** If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

4.9.14 **TIME IS OF THE ESSENCE:** Time is of the essence with respect to the performance of the terms of this Contract.

4.9.15 **AUTHORIZATION:** Each party to this Contract represents and warrants to the other parties that: (a) it has the right, power and authority to enter into and perform its Obligations under this Contract; and (b) it has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract

constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

4.9.16 **SUCCESSORS IN INTEREST:** All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

4.9.17 **OBLIGATIONS BEYOND CONTRACT TERM:** This Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to this Contract. All obligations of the Agency/Buyer and the Vendor incurred or existing under this Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of this Contract.

4.9.18 **COUNTERPARTS:** The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

4.9.19 **FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS:** The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

4.9.20 **ADDITIONAL PROVISIONS:** The parties agree that if an Addendum, Rider or Exhibit is attached hereto by the parties, and referred to herein, then the same shall be deemed incorporated herein by reference.

5. AGENCY/BUYER SUPPLEMENTAL TERMS AND CONDITIONS

Not applicable

6. STATE FORMS REQUIRED OF THE VENDOR

This section serves as a placeholder for any State Forms completed as part of the RFP process that also need to be included in the Contract (if necessary). It is important to note that this section references State forms that are necessary to be included in the Contract and may not include all of the forms listed in section 5.2.9 of the RFP, "State Forms Required of the Vendor." In addition, this section does not serve as an opportunity for Vendors to insert their own forms.

7. SIGNATURE PAGE: CONTRACT FOR SERVICES

This contract ("Contract") is made and entered into as of the _____ day of August, 2006, by and between the State of Illinois, a body politic ("State") by and through its agency and/or buyer, Illinois Commerce Commission ("Agency" "Buyer" or "Agency/Buyer") and URS Corporation "Vendor".

WITNESSETH:

WHEREAS, on March 7, 2006, State issued a Request for Proposals ("RFP") inviting Offers to address the Agency's needs to update information contained in its Statewide Crossing Inventory.

WHEREAS, as a result of Vendor's Offer and in reliance on the representations, assurances, and acknowledgements made therein, as well as the representations, assurances and acknowledgements made herein, State has determined to award Vendor this contract based upon its Offer and subject to the terms and conditions contained herein, for the provision of the services specified in this contract to the State.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the foregoing and to the terms set forth herein.

In Witness whereof, Agency/Buyer and Vendor have caused this CONTRACT to be executed by duly authorized representatives of the respective PARTIES on the dates shown below:

Vendor (Company Name and D/B/A):

URS Corporation

Keith W. Benting

Signature

Keith W. Benting

Printed Name

Title: Vice President **Date:** 8/23/06

Agency/Buyer (Name):

Signature

Timothy J. Anderson

Printed Name

Title: Executive Director **Date:** 8/28/06

Mary Stephenson Schroeder BY

Signature

MARY STEPHENSON SCHROEDER

Printed Name

Title: General Counsel **Date:** 8-28-06

Kenneth E. Hundrieser

Signature

KENNETH E. HUNDRIESER

Printed Name

Title: State Purchasing Officer **Date:** 08/28/06