



BIDNET DIRECT ELECTRONIC SUBMISSION INSTRUCTIONS

When submitting a response (proposal, quote or bid) electronically through the e-procurement platform, it is the sole responsibility of the vendor to ensure that the response, including all necessary attachments, is received prior to the indicated closing date and time, Mountain Standard Time.

Be aware that submitting a password in the e-procurement platform acts as an electronic signature which is just as legal and binding as an original signature (see Electronic Signatures in Global and National Commerce Act for more information).

Vendors must be registered in the e-procurement platform, BidNet Direct, in order to participate in the bidding process for this solicitation.

Vendors can register for an BidNet Direct Limited account for free at <https://www.bidnetdirect.com/arizona/maricopacounty>. Registered users will be able to search for bids, access bid information and documents, receive notifications about bids, and submit bids via the e-procurement platform (<https://www.bidnetdirect.com>) for all open Maricopa County bids.

Select the Vendor Registration link to begin the process and complete all the mandatory fields. There is no cost to register to the Arizona Purchasing Group.

ONLY RESPONSES THAT ARE SUBMITTED THROUGH THE E-PROCUREMENT PLATFORM WILL BE CONSIDERED.

FINDING A SOLICITATION

Solicitations can be found by using the search bar if you know the name or number of the solicitation. If you are unsure of those, use the filter function on the left side navigation panel.

- Select Arizona, then Maricopa County from the Location filter.
- Select Member Agency Bids from the top tabs to see only Maricopa County bids.

The solicitation title and closing date/time will be displayed. Once you select the title, the solicitation will open and display basic information like the contact, purchase type and relevant dates. If a pre-bid conference is scheduled you will see that on this page.

The left side navigation panel will display tabs.

- Select the DOCUMENTS tab to display all relevant documents. Be sure to read all documents in their entirety as these will provide specific submission instructions.
- If you are asked to provide pricing in a specific document, be sure to download the pricing document from the document list. You are required to download or read all documents prior to submission.

SUBMITTING YOUR BID (bid/proposal/offer):

- Select the PLACE BID icon from the top right corner of your screen. A new window will pop up asking you to select PLACE A NEW BID or PLACE NO BID.
 - If you select Place No Bid, you will be prompted for a reason prior to submitting.
 - If you select Place New Bid, you will be routed to a page where you will upload all relevant documents.
 - If there are line items associated with the bid, you will be asked for line-item pricing.

Once you have provided pricing through the requested document or through the line-item pricing,

- Select NEXT. A window will open where you can take exceptions to any aspect of the bid requirements. If you have exceptions, please describe them here. If you do not, scroll down to Compliance & Authentication.

Please note if you have not read all the solicitation's related documents you will be prompted to read them all or risk non-compliance. You will enter your full name and password, then select SUBMIT BID. You will be asked if you are sure you want to proceed, if you select yes, you will be taken to a Bid Conformation page which states that your bid has been submitted.

You can print the confirmation or download a pdf of your submittal. You may withdraw or modify your proposal until the date/time the bid closes. You will receive a notification if any questions are asked or if any changes are made to the solicitation. You may be required to submit an Acknowledgement of any addenda.

A RESPONDENT'S BID OFFER WILL NOT BE ACCEPTED AS RESPONSIVE BY THE COUNTY UNLESS ALL REQUIRED INFORMATION HAS BEEN PROVIDED. THIS INCLUDES VIEWING/ACCEPTING ALL DOCUMENTS, UPLOADING REQUIRED ATTACHMENTS/QUALIFICATIONS, AND PROVIDING AN OFFER/PROPOSAL.

MARICOPA COUNTY QUALIFICATIONS

If you provide A&E services or other related professional or construction services under Article 5 of the Maricopa County Procurement Code, please select the qualifications that you wish to be considered for under the Available Qualifications section. You will provide responses to the questions and upload the Pre-Qualification Application for each discipline.

ASKING A QUESTION:

- In order to ask a question, select Ask Question from the available options on the right side. This will open a dialog box where you will input a subject, ask your question, and select SUBMIT. The contact will receive a notification that a question has been asked. Once the answer to the question has been published, anyone who has downloaded the documents related to the bid will receive notice that an answer has been posted, and will be able to view all Q&A.
- Inquiries about the solicitation must be submitted via the e-procurement platform by the question deadline posted in the Bid Details.
- Inquiries may be submitted by telephone to the procurement officer for the solicitation but must be followed up in writing for the answer to be binding. No oral communication is binding on Maricopa County.
- Questions about the e-procurement platform's functionality must be directed to BidNet Direct. Phone: 1-800-835-4603, Email: support@bidnet.com;

ADDITIONAL INFORMATION

When the respondent clicks "Confirm and submit response," they acknowledge that the information and documents entered in the e-procurement platform are accurate and represent the supplier's actual proposal, quote, or bid.

The e-procurement platform registers the date and time the offer has been received. Receipt of a respondent's offer does not necessarily mean that an offer is finalized. **ACCEPTANCE OF A RESPONDENT'S OFFER BY THE E-PROCUREMENT PLATFORM IS NOT AN INDICATION THAT THE COUNTY HAS ACCEPTED A RESPONDENT'S OFFER. THE COUNTY WILL EVALUATE THE RESPONSES RECEIVED AND MAY DETERMINE A RESPONSE IS NON-RESPONSIVE IF THE RESPONDENT HAS FAILED TO INCLUDE ALL REQUIRED INFORMATION, INCLUDING ATTACHMENTS, WITH THEIR SUBMISSION.**

Be aware that entering information and uploading documents into the e-procurement platform may take considerable time. Allow sufficient time to complete the online forms and upload documents. **It is recommended that suppliers submit responses a minimum of 24 hours prior to the closing deadline.** The deadline for submitting information and documents will end at the closing time indicated in the solicitation. All information and documents must be fully entered, uploaded, acknowledged (Confirm) and recorded into the e-procurement platform before the closing time or the system will stop the process and the response will be considered late and will not be accepted.

Responses submitted in the e-procurement platform are completely secure. No one (including County purchasing staff) can see responses until after the deadline. Suppliers may modify or change their response at any time prior to the closing deadline. However, all modifications or changes must be completed and acknowledged (Confirm) in the e-procurement platform prior to the deadline. The e-procurement platform will post a notice that the modification/change (new offer) has been received. This notice from the e-procurement platform **MUST** be recorded prior to the closing date and time MST or the response will be considered late and will not be accepted.

**SPECIAL PROVISIONS
BID/CONTRACT DOCUMENTS**

FOR

Northern Parkway 103rd Ave to 91st Ave-Phase 1

SERIAL #260059-DBB

WORK ORDER NO. TT0372

FEDERAL-AID PROJECT NO. MMA-0(281)D

ADOT TRACS No. T0233 01C

MCDOT CONTRACT #2026-043

C-64-26-128-X-00

Prepared By: Paul Shamrock

Maricopa County Department of Transportation

Recommended for Construction:

Marcellus Lisotta

Date: 7/21/2026

**Marcellus Lisotta
Project Manager**

Issued for Construction:

Jesse Gutierrez

Date: 7/21/2026

**Jesse Gutierrez,
Transportation Director/County Engineer**

ALL WORK SHALL CONFORM WITH THE 2026 REVISION TO THE 2025 EDITION OF THE UNIFORM STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION PUBLISHED BY THE MARICOPA ASSOCIATION OF GOVERNMENTS (MAG) AS MODIFIED BY THE MCDOT SUPPLEMENT TO THE MAG STANDARD SPECIFICATIONS DATED JANUARY 2026 AND THE PROJECT SPECIAL PROVISIONS.



Maricopa County

REQUEST FOR BIDS FOR Northern Parkway 103rd Ave to 91st Ave-Phase 1

**SERIAL #260059-DBB
MCDOT CONTRACT #2026-043**

**Bids Due: Thursday, September 10, 2026, 2:00 p.m. Mountain
Standard Time (MST)
in BidNet Direct
(<https://www.bidnetdirect.com/arizona/maricopacounty>)**

MARICOPA COUNTY
Office of Procurement Services – Article 5
301 W. Jefferson Street, 7th Floor
Phoenix, Arizona 85003

Direct all inquiries to:

Paul Shamrock
Article V Procurement Officer
(602) 506-6476
Email: Paul.Shamrock@maricopa.gov

ATTENTION

ALL PROSPECTIVE BIDDERS

Arizona Revised Statutes (A.R.S.) § 34-201 now requires that construction bid proposals be accompanied by a certified check, cashier's check, or surety bond for 10 percent of the total amount of the bid.

All bonds must be executed solely by a surety company or companies holding a Certificate of Authority to transact surety business in Arizona, issued by the Director of the Arizona Department of Insurance.

Bonds (bid, payment, and performance) executed by an individual surety or sureties are not in compliance with the A.R.S.

Bids received containing bid bonds not in compliance with the A.R.S. will be considered as being non-responsive. The use of County-supplied bond forms is encouraged but is not mandatory.

Submit your bids accordingly.

MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION
SERIAL #260059-DBB
Northern Parkway 103rd Ave to 91st Ave-Phase 1

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MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION INVITATION TO BIDS

DIVISION I – INVITATION TO BIDS

PART I – INVITATION TO BIDS

Notice is hereby given that Maricopa County (County) is conducting this invitation for SEALED BIDS for the work described herein. **Bids shall be received electronically through an outside e-procurement platform, BidNet Direct, until Thursday, September 10, 2026, 2:00 p.m. MST**, and then opened electronically through Bid Net Direct. No bids will be received after the time specified for bid opening. All bids must be submitted on the bid forms furnished by the Maricopa County Office of Procurement Services and included in the bid/contract documents. The Board of Supervisors reserves the right to reject any and all bids and to waive any informality in any bid received.

Vendors must be registered in the e-procurement platform, BidNet Direct, in order to participate in the bidding process for this solicitation.

Vendors can register for an BidNet Direct Limited account for free at <https://www.bidnetdirect.com/arizona/maricopacounty>. Registered users will be able to search for bids, access bid information and documents, receive notifications about bids, and submit bids via the e-procurement platform (<https://www.bidnetdirect.com>) for all open Maricopa County bids.

Select the Vendor Registration link to begin the process and complete all the mandatory fields. There is no cost to register to the Arizona Purchasing Group.

ONLY RESPONSES THAT ARE SUBMITTED THROUGH THE E-PROCUREMENT PLATFORM WILL BE CONSIDERED.

For assistance with the e-procurement platform, contact BidNet Direct Vendor Support during regular business hours M-F from 8 a.m. – 8 p.m. ET (5 a.m. – 5 p.m. PT) at (800) 835-4603, option 2 or support@bidnet.com

LOCATION

This Federally-funded project is located in Maricopa County

PROPOSED WORK

Roadway improvements for Northern Parkway: 103rd Ave to 91st Ave Phase 1, including new pavement, drainage system, sidewalks, medians, new bridge, lighting, signing and striping. Phase 1 will construct the roadway segment from 103rd Ave to 99th Ave. This federally funded construction project is a Northern Parkway segment to be built within the Cities of Peoria and Glendale and shall be operated and maintained by the City of Peoria upon construction completion

ELIGIBILITY OF CONTRACTOR

When a contract is funded, either wholly or in part, by Federal funds, an award of contract may be made contingent upon the successful bidder obtaining an appropriate license from the State Registrar of Contractors, in accordance with A.R.S. §§ 32-1101

through 32-1170.03. The license must be obtained within 60 calendar days following opening of bid proposals. No adjustment in proposed bid prices or damages for delay will be allowed as a result of any delay caused by the lack of an appropriate license.

Failure to acquire the necessary licensing within the specified period of time shall result in either award to the next lowest responsible bidder, or re-advertisement of the contract, as may be in the best interests of the Department.

It is the policy of the Maricopa County Department of Transportation (MCDOT) to endeavor to ensure in every way possible that disadvantaged business enterprises have every opportunity to participate in providing professional services, purchased goods, and contractual services without being discriminated against on the grounds of race, religion, sex, age, disability, or national origin.

The bidder shall be required to certify that the bidder and any subcontractors are appropriately licensed as contractors in the State of Arizona for performing the before-mentioned type of work. Verification shall be on the form provided herein.

The bidder may be required to furnish an affidavit as evidence of previous satisfactory performance in the above-mentioned type of work.

CONTRACT TIME

All construction work on this contract is to be completed within **365 CALENDAR DAYS** beginning with the date specified in the Notice to Proceed. Exclusive of and following the contract time allowed for construction work are **120 CALENDAR DAYS** for internal administrative purposes thereby resulting in a total contract performance period of **485 CALENDAR DAYS**.

DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. The minimum goal for participation of DBE's on this contract is 0% percent.

TITLE VI

The Maricopa County Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. § 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

PRE-BID CONFERENCE

No Pre-Bid Meeting will be held under this solicitation.

Questions or clarifications regarding the bid documents shall be addressed through BidNet Direct using the link in the "Q&A" tab. Minor administrative questions may be sent to **Paul Shamrock**, Article 5 Procurement Officer at **Paul.Shamrock@maricopa.gov**. All questions or clarifications must be received by the County at least 28 days prior to bid opening date. When appropriate, any answers or clarifications affecting the cost may be addressed to all bidders in an addendum. Verbal interpretations or clarifications will not be given to individual contractors.

CONTRACT DOCUMENTS BONDS

Maricopa County cannot guarantee mail delivery.

As a guarantee that the contractor will enter into a contract, each bid shall be accompanied by a surety bond, certified check, cashier's check, or money order. The bid security amount shall be **10 percent** of the contractors bid, made payable to the TREASURER OF MARICOPA COUNTY as a guarantee that if the work is awarded to the bidder, the bidder will, within 10 days from the date of Notice of Award, enter into proper contract and bond condition for the faithful performance of the work, otherwise, said amount may be forfeited to the Board of Supervisors as liquidated damages.

Upload or scan a copy of your bid security in BidNet Direct (seal must be visible). If you are submitting certified check, cashier's check, or money order in lieu of the surety bond, upload a copy of the check in BidNet Direct with your electronic bid, and deliver the original check no later than 4:00 p.m. MST on the bid due date to: Office of Procurement Services, 301 W. Jefferson Street, 7th Floor, Phoenix, Arizona 85003. The envelope containing the certified check, cashier's check, or money order shall be addressed to the owner and be identified with the project name and the bidder's name and address, and shall be marked with the words REQUEST FOR BIDS FOR **Northern Parkway 103rd Ave to 91st Ave-Phase 1, Serial #260059-DBB**.

All bonds must be pursuant to A.R.S. Title 34, Chapter 2, Article 2, and executed solely by a surety company or companies holding a Certificate of Authority to transact surety business in Arizona, issued by the Director of the State of Arizona Department of Insurance.

Bonds executed by an individual surety or sureties are not in compliance with A.R.S.

Bids received containing bid bonds not in compliance with the A.R.S. will be considered as being non-responsive. The use of County-supplied bond forms is encouraged but is not mandatory.

All bids are to be marked in accordance with Section 102.9 of the Uniform Standard Specifications.

PART II – ADMINISTRATIVE REQUIREMENTS

1. REFERENCE DOCUMENTS

The work described in the Construction Special Provisions and shown on the Plans and Drawings for this project, shall be performed in accordance with the Maricopa County Association of Governments (MAG) 2025 revision to the 2020 issue of the Uniform Standard Specifications for Public Works Construction, the Maricopa County Department of Transportation (MCDOT) English Supplement to MAG Uniform Standard Specifications for Public Works Construction January 2025 Edition, and the Construction Special Provisions, attached hereto.

In the event a conflict exists between the Plans, the Construction Special Provisions, and/or the MAG Uniform Standard Specifications, the order of precedence shall be as follows: the Construction Special Provisions, the Project Plans, the MCDOT Metric and/or English Supplement to MAG Uniform Standard Specifications for Public Works Construction, and the 2025 Revision to the 2020 Edition of the Uniform Standard Specifications for Public Works and all revisions thereto.

2. BID PREPARATION

It shall be the responsibility of the prospective bidder to determine, prior to the submittal of its bid, if any addenda to the project have been issued by Maricopa County. All addenda issued shall be acknowledged and submitted by bidder with its bid.

Prospective bidders may call the Maricopa County Office of Procurement Services to determine if any addenda have been issued for this project.

Bids must be submitted electronically through BidNet Direct. The bid, the bid security, and other documents required to be submitted with the bid shall also be uploaded through BidNet Direct.

Each bidder assumes full responsibility for the timely submission of its bid. Any written, mailed, dropped-off, oral, fax, telephonic, or telegraphic bids are invalid and will not receive consideration.

ONLY RESPONSES THAT ARE SUBMITTED THROUGH BIDNET DIRECT WILL BE CONSIDERED FOR AWARD.

Submission instructions for BIDS FOR Northern Parkway 103rd Ave to 91st Ave-Phase 1, Serial #260059-DBB:

The following is a list of all of the documents that are to be submitted with the bid. **Submit one PDF** containing one copy of each of the following completed documents, with the exception of Attachment 2 – Bid Schedule; bidding firms shall enter and submit all pricing separately in the Bid Schedule in BidNet Direct. No

scanned, hardcopy, or electronic pricing (outside of BidNet Direct) documents will be accepted.

1. Bid Form with Addendum Acknowledgment (if any) (Attachment 1)
2. Bid Schedule (Attachment 2)
3. Subcontractor Listing (Attachment 3)
4. Bid-Bond (Attachment 4)
5. Non-collusion Affidavit (Attachment 5)
6. Legal Worker Certification (Attachment 6)
7. Verification of License form (Attachment 7)
8. Affidavit of Compliance (Attachment 8)
9. Debarment List (Attachment 9)
10. Disclosure of Lobbying Activities (Attachment 10)
11. Assurances – Construction Programs (Attachment 11)
12. Certification with regard to the performance of previous contracts or subcontracts subject to the equal opportunity clause and the filing of required reports (Attachment 12)

Appropriate sections of the forms must be filled out, addenda listed, if any, and signed.

Bids that do not comply with the above requirements may be rejected by the County.

NOTE: All bidders must complete an on-line bidders list at <https://utracs.azdot.gov/BiddersListInfo/> and submit the corresponding Bidders List email confirmation notice to the Office of Procurement Services by 4:00 p.m. MST on the fifth calendar day after bids are opened.

The corresponding Bidders List email confirmation notice shall be submitted to Paul.Shamrock@Maricopa.Gov, Maricopa County's Office of Procurement Services, by electronic email or to 301 W. Jefferson Street, Suite 700, Phoenix, Arizona 85003 by 4:00 p.m. MST on the fifth calendar day after the opening of bids (refer to LPA EPRISE, Computation of Time).

Execution of the contract, submittal of the payment bond, performance bond, and Certificate of Insurance are not required at the time of bid submittal. These documents must be submitted to the County by the successful bidder at time of contract execution.

Contractor may be required to provide proof of satisfactory completion of similar public works projects.

3. SUSPENSION FROM BIDDING

- 3.1** The County may suspend any persons and any subsidiary or affiliate of any person from further bidding to the County and from being a subcontractor to a contractor with the County or a supplier to the County if that person or any officer, director, employee, or agent of that person is convicted, in this State,

of any of the following charges, or of similar charges in any Federal court, or a court in any State:

- entering into any contract, combination, conspiracy or other unlawful act in restraint of trade or commerce;
- knowingly and willfully falsifying, concealing, material fact by trick, scheme, or device;
- making false, fictitious, or fraudulent statements or representations; or
- making or using false writing or a document knowing it to contain a false, fictitious, or fraudulent statement or entry.

Under this subsection, a person means any individual, partnership, corporation, association or other entity formed for the purpose of doing business as a contractor, subcontractor or supplier.

- 3.2** The signature of the bid proposal by a contractor constitutes contractor's certification, under penalty of perjury under the laws of the United States, that contractor, or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of Federal funds, has not been, or is not currently, under suspension, debarment, voluntary exclusion or been determined ineligible by any Federal agency within the past three years. Signature on the bid proposal also certifies, under penalty of perjury under the laws of the United States, that contractor does not have a proposed debarment pending. In addition, signature of the bid proposal certifies that contractor has not been indicted, convicted, or had a civil judgment rendered against contractor by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Any exceptions to the above paragraph shall be noted and fully described on a separate sheet and attached to the bid proposal.

4. AWARD AND EXECUTION OF CONTRACT

- 4.1** When a contract is funded, either wholly or in part, by Federal funds, an award of contract may be made contingent upon the successful bidder obtaining an appropriate license from the State Registrar of Contractors, in accordance with A.R.S. §§ 32-1101 through 32-1170.03. The license must be obtained within 60 calendar days following opening of bid proposals. No adjustment in proposed bid prices or damages for delay will be allowed as a result of any delay caused by the lack of an appropriate license.
- 4.2** Failure to acquire the necessary licensing within the specified period of time shall result in either award to the next lowest responsive bidder, or re-advertisement of the contract, as may be in the best interests of the County.
- 4.3** Licensing information is available from:

Arizona Registrar of Contractors
1700 West Washington Street, Suite 105

5. RETENTION OF RECORDS

- 5.1** Contractor and subcontractors of any tier shall maintain and retain for a period of five years following the final payment to contractor all documentation, including support documentation, and shall make all such materials available at any reasonable time during the duration of the project and for a five-year period following the completion of the project, at the request of the County or the appropriate grantor agency for auditing, inspection, and copying purposes.
- 5.2** All records of contractor's expenses pertaining to this project and records supporting such expenses shall be kept and maintained in accordance with generally recognized accounting methods. contractor shall surrender all technical project documents to County at the completion of the project.
- 5.3** Contractor shall contractually obligate subcontractors of any tier to adhere to the record retention requirement stated above.

6. DIFFERING SITE CONDITIONS

- 6.1** During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.
- 6.2** Upon written notification, the engineer will investigate the conditions and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify contractor of the determination whether or not an adjustment of the contract is warranted.
- 6.3** No contract adjustment which results in a benefit to contractor will be allowed unless contractor has provided the required written notice.
- 6.4** No contract adjustment will be allowed under this clause for any effects caused by unchanged work.

7. EQUIPMENT RATE ADJUSTMENT FACTOR

- 7.1** When adjusting equipment rates used during force account work, Section 109.5.1 of MAG shall be used for such adjustments.

8. PAYMENT FOR BOND ISSUES AND BUDGET PROJECTS (SECTION 109.7)

The County will accept securities in a form and from a financial institution acceptable to the County, in accordance with the A.R.S. § 34-221, as amended, in lieu of 10 percent retainage on pay estimates, if requested by contractor.

MEASUREMENT AND PAYMENT - If satisfactory progress is being made, the contractor will receive a payment each month based on the amount of work completed during the preceding month. The Department will prepare a draft monthly estimate for review by the contractor. The contractor shall work with the Engineer to finalize the monthly estimate. When the Engineer and the contractor have reached agreement, the final monthly estimate will be prepared and signed by the contractor and the Engineer. The contractor's signature constitutes a certification that the work was satisfactorily performed, meets the specifications, and the quantities reported are accurate regardless of whether the work was performed by the contractor or a subcontractor. The Engineer will submit a signed monthly estimate for payment.

9. SUSPENSIONS OF WORK ORDERED BY THE ENGINEER

- 9.1** If the performance of all or any portion of the work is suspended or delayed by the engineer, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, contractor shall submit to the engineer, in writing, a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.
- 9.2** Upon receipt, the engineer will evaluate contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.
- 9.3** No contract adjustment will be allowed unless contractor has submitted the request for adjustment, in writing, within the time prescribed.
- 9.4** No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other terms or condition of this contract.

10. MATERIALS SOURCES

All materials not specifically noted as provided by the County or other participating agency shall be obtained from commercial sources. Contractor shall pay all royalties, or any other charges or expenses incurred in connection with the securing and hauling of the material. Contractor shall provide the engineer with a list of proposed commercial sources prior to utilization of such sources and shall present satisfactory evidence that the material obtained from the commercial sources meets the specifications of this project.

11. SUPPLEMENTARY GENERAL CONDITIONS

SUPPLEMENTARY GENERAL CONDITIONS

DEFINITION OF TERMS (SUBSECTION 101.2)

The following terms shall be added to Section 101.2 of 2019 Revision to MAG 2015:

- 11.1** Add the definition "Disadvantaged Business Enterprise Program (DBE)" as being the program adopted for Federal-aid projects.
- 11.2** Add the definition "COUNTY" as being the Maricopa County Department of Transportation, acting through its legally constituted officials, officers, or designated employees.
- 11.3** Add the definition "Americans With Disabilities Act of 1990 (ADA)" as the act that makes it unlawful to discriminate in employment and/or service provision, against a qualified individual with a disability.

12. INDEMNIFICATION

To the fullest extent permitted by law, contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses, and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions, or mistakes relating to the performance of this contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss, or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any negligent acts, errors, omissions or mistakes in the performance of this contract including any person for whose acts, errors, omissions, or mistakes contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

13. INSURANCE REQUIREMENTS

The contractor, at the contractor's own expense, shall purchase and maintain, at a minimum, the herein stipulated insurance from a company or companies duly licensed by the State of Arizona and possessing a current AM Best, Inc. rating of **B++**. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this contract.

In the event that the insurance required is written on a claims-made basis, contractor warrants that any retroactive date under the policy shall precede the effective date of this contract and either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.

Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require the contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. County shall not be obligated, however, to review such policies and/or endorsements or to advise the contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve the contractor from, or be deemed a waiver of Maricopa County's right to insist on strict fulfillment of the contractor's obligations under this contract.

The insurance policies required by this contract, except Workers' Compensation, shall name County, its agents, representatives, officers, directors, officials, employees, Arizona Department of Transportation, and State of Arizona as additional insureds.

The policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against County, Maricopa County, City, its agents, representatives, officers, directors, officials, and employees for any claims arising out of the contractor's work or service.

If available, the insurance policies required by this contract may be combined with Commercial Umbrella Insurance policies to meet the minimum limit requirements. If a Commercial Umbrella insurance policy is utilized to meet insurance

requirements, the Certificate of Insurance shall indicate which lines the Commercial Umbrella Insurance covers.

COVERAGES

Commercial General Liability	\$2,000,000	Each Occurrence
	\$2,000,000	Personal & Advertising Injury
	\$4,000,000	General Aggregate
	\$4,000,000	Products/Completed Operations
Automobile Liability	\$2,000,000	Each Occurrence
Workers' Compensation	\$1,000,000	Each Accident
	\$1,000,000	Disease for Each Employee
	\$1,000,000	Disease Policy Limit

Commercial General Liability

Commercial General Liability (CGL) insurance and, when necessary, Commercial Umbrella insurance with a limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Personal/Advertising Injury, \$4,000,000 Products/Completed Operations Aggregate, and \$4,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, and blanket contractual coverage, and shall not contain any provision that would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Automobile Liability

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$2,000,000 each occurrence with respect to any of the contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the contractor's work or services under this contract.

Workers' Compensation

Workers' Compensation insurance to cover obligations imposed by Federal and state statutes having jurisdiction of the contractor's employees engaged in the performance of the work or services under this contract; and Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

Certificates of Insurance

Prior to commencing work or services under this contract, the contractor shall furnish County with Certificates of Insurance in a form acceptable to County, or

formal endorsements as required by the contract in the form provided by the County, issued by the contractor's insurer(s), as evidence that policies providing the required coverages, conditions, and limits required by this contract are in full force and effect. Such certificates shall identify this contract number and contract title.

In the event any insurance policy(ies) required by this contract is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the contract, a renewal certificate must be sent to County 15 days prior to the expiration date.

Cancellation and Expiration Notice

Insurance required herein shall not expire, be canceled, or materially changed without 30 days prior written notice to County.

14. NO COUNTY OBLIGATION

This solicitation does not obligate Maricopa County to pay any costs incurred in the preparation and submission of bids or in negotiating a contract with any firm, nor does this solicitation obligate Maricopa County to enter into a contract with any selected party.

15. INTERPRETATION OF CONTRACT DOCUMENTS BEFORE SUBMISSION

QUESTIONS: If you have formal questions about technical information regarding this solicitation you must submit your question using the link in the "Q&A" tab in BidNet Direct. If you have informal questions about the procurement process, contact:

Paul Shamrock, Article 5 Procurement Officer

Tel: **(602) 506-6476**

Fax: **(602) 506-6766**

Email: **Paul.Shamrock@maricopa.gov** (preferred method)

Note: The County may answer informal questions orally. The County makes no warranty of any kind as to the correctness of any oral answers and uses this process solely to provide minor clarifications rapidly. Oral statements or instructions shall not constitute an amendment to this solicitation. Any contractor shall not rely on any verbal responses from the County. If you have formal questions about any part of this solicitation which could result in a material issue or a formal amendment to this solicitation, see **INTERPRETATIONS AND ADDENDA** below.

16. INTERPRETATIONS AND ADDENDA

Should a bidding firm find any ambiguity, inconsistency or error in the solicitation or contractual documents or should you be in doubt as to any meaning, the bidding firm shall at once notify the procurement officer, in writing, who will send a written addendum via BidNet Direct to all bidding firms who are on record with the County as having been sent a copy of the solicitation. Neither the County nor its representatives will be responsible for oral instructions or information. Interpretation or correction of the solicitation shall be made only by written addendum, which will be delivered electronically or otherwise to each bidder of record. The County is not responsible for any other explanations or interpretations.

Maricopa County is not responsible for assuring delivery of addenda to any potential bidder. Failure to receive addenda or failure to acknowledge receipt shall not constitute a basis for claim, protest or reissue of the solicitation.

All formal inquiries or requests for significant or material clarification or interpretation, or notification to Maricopa County of errors or omissions relating to this solicitation must be submitted via the link in the "Q&A" tab in BidNet Direct. Informal or minor administrative questions may be sent to:

Paul Shamrock, Article 5 Procurement Officer
Maricopa County, Office of Procurement Services
Tel: **(602) 506-6476**
Fax: **(602) 258-6766**
Email: **Paul.Shamrock@maricopa.gov**

All formal inquiries must be received by Maricopa County at least 28 calendar days before the time and date set for submission of bids and closing this solicitation. Failure to submit inquiries by this deadline may result in the inquiry not being answered.

17. BIDNET DIRECT REGISTRATION

Any vendor intending to respond as a proposer and who is receiving this solicitation from a source other than the Maricopa County Office of Procurement Services website is required to register as a vendor with Maricopa County on the BidNet Direct registration page (<https://www.bidnetdirect.com/public/user-registration?purchasingGroupId=700132901>), and register receipt of the solicitation documents by visiting the website at <https://www.bidnetdirect.com/arizona/maricopacounty> and requesting the documents in order to have their information added to the list of "Planholders" for this procurement. **Firms or persons submitting a bid in response to this solicitation who are not listed on the Planholders list may have their bid declared non-responsive and rejected.**

18. LEGAL WORKER REQUIREMENTS FOR SERVICE AND CONSTRUCTION CONTRACTS

As required by A.R.S. § 41-4401, the County is prohibited after September 30, 2008 from awarding a contract to any service or construction contractor who fails,

or whose subcontractors fail, to comply with A.R.S. § 23-214-A. The contractor warrants that it complies fully with all Federal immigration laws and regulations that relate to its employees, that it shall verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to the contractor. The contractor acknowledges that a breach of this warranty by contractor or by any subcontractor or sub-subcontractor under this contract shall be deemed a material breach of this contract, and is grounds for penalties, including termination of this contract, by Maricopa County. Maricopa County retains the right to inspect the records of any contractor, subcontractor and sub-subcontractor employee who performs work under this contract, and to conduct random verification of the employment records of the contractor and any subcontractor and sub-subcontractor who works on this contract, to ensure that the contractor and each subcontractor and sub-subcontractor is complying with the warranties set forth above. Contractor shall be responsible for all costs associated with compliance with this requirement. A copy of the certification document is contained in this solicitation.

19. PROTESTS

Maricopa County believes that it can best maintain its reputation for treating contractors and/or suppliers in a fair, honest, and consistent manner by conducting solicitations in good faith and by granting competitors an equal opportunity to win an award. Any protest shall be filed pursuant to the Maricopa County Procurement Code, Section MC1-905. Protests shall be directed to the procurement officer.

20. INFLUENCE

As prescribed in MC1-1203 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct, may be grounds for disbarment or suspension under MC1-902.

An attempt to influence includes, but is not limited to:

A person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type of valuable contribution or subsidy, that is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

If a person attempts to influence any employee or agent of Maricopa County, the chief procurement officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

ABSOLUTELY NO CONTACT BETWEEN THE RESPONDENT AND ANY COUNTY PERSONNEL, OTHER THAN THE OFFICE OF PROCUREMENT

SERVICES, IS ALLOWED DURING THE SOLICITATION PROCESS UNLESS THE COMMUNICATION IS IN REGARD TO PRE-EXISTING BUSINESS WITH THE COUNTY. ANY COMMUNICATIONS REGARDING THE SOLICITATION, ITS PARTICIPANTS OR ANY DOCUMENTATION PRIOR TO THE CONTRACT AWARD MAY BE GROUNDS FOR DISMISSAL OF THE RESPONDENT FROM THE EVALUATION PROCESS.

21. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The undersigned (authorized official signing for the contractor) certifies to the best of his or her knowledge and belief, that the contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:

- are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
- have not within a three-year period preceding this solicitation or contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- have not, within a three-year period preceding this contract, or solicitation had one or more public transactions (Federal, State or local) terminated for cause of default.

22. NEGOTIATION CLAUSE

Recovery of expenses incurred by contractor for a delay for which the County is responsible, and which is unreasonable under the circumstances and which was not contemplated by the parties, shall be negotiated between contractor and the County. This provision shall not be construed to void any provisions of the contract which require notice of delays, provide for other procedures for settlement, or provide for the assessment of liquidated damages.

23. NON-COLLUSION CERTIFICATION

Contractor warrants that, in connection with this contract, to the best of his or her knowledge and understanding, neither he or she, nor anyone associated with contractor's firm, has directly or indirectly, participated in any collusion, entered into any contract, combination, conspiracy or other act in restraint of trade or commerce in violation of the provisions of Subsection 112(c) of Title 23, United States Code and Title 44, Chapter 10, Article 1, and Title 34, Chapter 2, and of A.R.S. § 34-251, Article 4, as amended.

24. LOBBYING

Contractor certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- 24.1** No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract grant, loan, or cooperative agreement.
- 24.2** If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor also agrees, by submitting his or her bid or proposal, that he or she shall require that the language of this certification be included in all subcontracts and lower tier subcontracts which exceed \$100,000 and that all such subcontractors and lower tier subcontractors shall certify and disclose accordingly.

The County will keep the prime contractors' certifications on file as part of their original bid proposals. Each prime contractor shall keep individual certifications from all subcontractors and lower tier subcontractors on file. Certifications shall be retained for three years following completion and acceptance of any given project.

Disclosure forms for the prime contractor shall be submitted to the engineer at the pre-construction conference. Disclosure forms for subcontractors and lower tier subcontractors shall be submitted to the engineer by the prime contractor along with the submittal of each subcontract or lower tier subcontract, as required under subsection 108.01, MAG, 2012, when said subcontracts exceed \$100,000. During the performance of the contract the prime contractor and any affected subcontractors shall file revised disclosure forms at the end of each calendar year quarter in which events occur that materially affect the accuracy of any previously filed disclosure form. Disclosure forms will be submitted by the engineer to the Federal Highway Administration for further processing.

25. FAILURE TO COMPLETE ON TIME (SUBSECTION 108.9)

Table 108, Liquidated Damages, of the MAG Standard Specifications shall be deleted in its entirety and shall be replaced with the following table:

TABLE 108 – SCHEDULE OF LIQUIDATED DAMAGES

Original Contract Amount		Liquidated Damages per Day	
From More Than	To and Including	Calendar Days or Fixed Date	Working Days
0	100,000	350	500
100,000	500,000	490	700
500,000	1,000,000	840	1,200
1,000,000	2,000,000	910	1,300
2,000,000	5,000,000	1,190	1,700
5,000,000	10,000,000	1,540	2,200
10,000,000	-----	2,380	3,400

26. COVENANT OF GOOD FAITH AND FAIR DEALING

This contract imposes an obligation of good faith and fair dealing in its performance and enforcement.

Contractor and the County, with a positive commitment to honesty and integrity, agree to the following mutual duties:

- Each will function within the laws and statutes applicable their duties and responsibilities.
- Each will assist in the other's performance.
- Each will avoid hindering the other's performance.
- Each will proceed to fulfill its obligations diligently.
- Each will cooperate in the common endeavor of the contract.

27. VOLUNTARY PARTNERING

27.1 The County intends to encourage the foundation of a cohesive partnership with contractor and their principal subcontractors and suppliers. This partnership will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance and completion within budget, on schedule, and in accordance with plans and specifications.

27.2 This partnership will be bilateral in makeup, and participation will be totally voluntary. Any cost associated with effectuating this partnering will be agreed to by both parties and will be shared equally.

27.3 To implement this partner initiative prior to starting of work and prior to the preconstruction conference, contractor's management personnel and the County, through its authorized representatives, will initiate a partnering development seminar/team building workshop. Project personnel will make arrangements to determine attendees at the workshop, agenda of the workshop, duration, and location. Persons required to be in attendance will be the engineer and key project personnel, the contractor's on-site project manager, and key project supervision personnel of both the prime and

principal subcontractors and suppliers. The project design engineers, FHWA, and key local government personnel will also be invited to attend as necessary.

27.4 Follow-up workshops may be held periodically throughout the duration of the contract as agreed by contractor and the County.

27.5 The establishment of a partnership charter on a project will not change the legal relationship of the parties to the contract nor relieve either party from any of the terms of the contract.

28. NON-DISCRIMINATION

28.1 Contractor, in connection with any activity under this contract, shall not discriminate against any person on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation, or belief. Contractor shall include a clause to this effect in all subcontracts. Contractor shall also comply with all applicable provisions of the Americans with Disabilities Act of 1990.

28.2 CONTRACTOR agrees to comply with all provisions and requirements of Arizona Executive Order 2023-01 and Arizona Executive Order 2009-09 as amended by Executive Order 2023-01, including flow down of all provisions and requirements to any subcontractors. Executive Order 2023-01 amends Executive Order 2003-22 and Executive Order 2009-09 and may be viewed and downloaded at the Governor of the State of Arizona's website <https://azgovernor.gov/office-arizona-governor/executive-order/1-0>, which is hereby incorporated into this contract as if set forth in full herein. Executive Order 2009-09 superseded Executive Order 99-4 and amended Executive Order 75-5 and may be viewed and downloaded at the Governor of the State of Arizona's website http://www.azgovernor.gov/dms/upload/EO_2009_09.pdf which is hereby incorporated into this contract as if set forth in full herein. During the performance of this contract, CONTRACTOR shall not discriminate against any employee, client or any other individual in any way because of race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status

29. BUY AMERICA

29.1 The Federal Highway Administration's Buy America requirements dictate the manufacturing process occur in the United States for ALL steel or iron products permanently incorporated into a Federal-aid highway construction project. However, other raw materials used in manufacturing the steel and iron products may be foreign or domestic.

29.2 Steel and iron not meeting these requirements may be used in products on this project provided that the invoiced cost to contractor for such manufactured products does not exceed either one-tenth of one percent of the total (final) contract cost, OR \$2,500, whichever is greater.

29.3 Any process which involves the application of a coating to iron or steel must also occur in the United States. These processes include epoxy coating, galvanizing, painting, or any other coating which protects or enhances the value of covered material.

- 29.4** Contractor shall furnish the engineer with certificates for any steel and iron products at time of delivery and PRIOR to incorporating such products into the project. Project documentation should also reflect deliveries falling into this category. The certifications must state that steel and iron products utilized on the project meet the Buy America requirements specified above, plus whether these products are domestic or foreign.
- 29.5** Note that Buy America requirements are NOT the same as Buy American, which could make some or all Federal aid on this project ineligible for reimbursement. See Division III, Exhibit 21 of this contract for additional information, including waivers.
- 29.6** Utility relocations: If using Federal funds for any part of the project, all utility agreements for utilities with prior rights will be in accordance with 23 C.F.R. Part 645 and include Buy America provisions, regardless of what funding source is used to fund the relocation. If done with materials procured after 12/31/2013 and included as pay items in a Federally-funded contract, Buy America applies.

29.7 SECTION 106 CONTROL OF MATERIALS: of the Standard Specifications is modified to add: **106.17 Construction Materials:**

A construction material, when used on a federal-aid construction project shall comply with the requirements of Build America, Buy America (BABA) Act specified in Title IX, Subtitle A, Part 1, Sections 70901 and 70911-70918 (Pub. L. No. 117-58 §§ 70901; §§ 70911-70918) of the Infrastructure Investment and Job Act (IIJA).

A “construction material” that is permanently incorporated on the project shall include an article, material, or supply that is or consists primarily of the following:

1. Non-ferrous metals;
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
3. Glass (including optic glass);
4. Lumber; or
5. Drywall.

Items manufactured through a combination of either two or more materials listed above, or at least one of the materials listed above and a material not listed shall be considered as a manufactured product, rather than as a construction material.

Build America, Buy America provisions specified for manufactured products in Section 70912(6)(B) of the IIJA, do not apply to federal-aid construction projects per FHWA’s existing statutory requirement applicable to manufactured products. A “manufactured product” is considered to be an item that undergoes one or more manufacturing processes before the item can be used on a federal-aid construction project.

Construction materials shall not include cement and cementitious materials; bituminous materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

All construction materials shall be produced in the United States. This means, all manufacturing processes to produce the construction materials shall occur in the United States. All manufacturing processes for construction materials shall mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

The contractor shall furnish the Engineer with Certificates of Compliance, conforming to the requirements of Subsection 106.05 of the specifications, which shall state that the construction materials incorporated in the project meet the requirements specified herein. 106CMATLS - 2/2

Certificates of Compliance shall also certify that all manufacturing processes to produce construction materials occurred in the United States.

Convict-produced materials are prohibited in accordance with the requirements of 23 CFR 635.417.

30. CARGO PREFERENCE ACT

30.1 The Cargo Preference regulations in 46 CFR 381 govern the implementation of the Cargo Preference Act of 1954. The U.S. Department of Transportation has ultimate reporting responsibility under this Act. Reporting by the contractor to the engineer and Maritime Administration is particularly important, requiring shipping details in the form of a master freighted bill of lading sent to cargo.marad@dot.gov .

31. WRITTEN CERTIFICATION PURSUANT to A.R.S. § 35-393.01

31.1 If vendor engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, vendor certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

32. FORCED LABOR

By submitting a bid for this solicitation and/or entering into a contract as a result of this solicitation, contractor agrees to comply with all applicable portions of Arizona Revised Statutes Section 35-394. Contracting; procurement; prohibition; written certification; remedy; termination; exception; definitions.

Contractor certifies that it does not currently, and agrees for the duration of the contract, that it will not use:

The forced labor of ethnic Uyghurs in the People's Republic of China.

Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

Any contractors, subcontractors or suppliers that use the forced labor or any good or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If contractor becomes aware during the term of the agreement that contractor is not in compliance with this paragraph, the contractor shall notify the County within five business days after becoming aware of the noncompliance. If the contractor fails to provide a written certification to the County that the contractor has remedied the noncompliance within 180 days after notifying the County of its noncompliance, then the agreement terminates, except that if the agreement termination date occurs before the end the 180-day period, the agreement terminates on the agreement termination date.

(END OF SECTION)

DIVISION II – ATTACHMENTS

1. Bid Form with Addendum Acknowledgment (if any) (Attachment 1)
2. Bid Schedule – Must include unit cost, amounts per bid item, and total bid amount. Addenda changes, if any, must be listed. (Attachment 2)
3. Sub-Contractor Listing (Attachment 3)
4. Current Form of Surety, Payment and Performance Bonds (Attachment 4)
5. Non-Collusion Affidavit (Attachment 5)
6. Legal Worker Certification (Attachment 6)
7. Verification of License form (Attachment 7)
8. Affidavit of Compliance (Attachment 8)
9. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions (Attachment 9)
10. Disclosure of Lobbying Activities (Attachment 10)
11. Assurances – Construction Programs (Attachment 11)
12. Certification with Regard to the Performance of Previous Contracts or Subcontracts Subject to the Equal Opportunity Clause and the Filing of Required Reports. (Attachment 12)
13. AZ UTRACS Registration and Required DBE Document Submittals (Attachment 13)
14. Title VI Assurances, Appendix A-E (Attachment 14)
15. Contract Agreement (Attachment 15)
16. Exhibit 1 – Sample Certificate of Liability Insurance
17. Exhibit 2 – Information Furnished Pursuant to the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity

ATTACHMENT 1 – BID FORM – PROPOSAL

TO THE BOARD OF SUPERVISORS
MARICOPA COUNTY
PHOENIX, ARIZONA

Gentlemen:

The following Proposal is made for constructing **Serial#260059-DBB, Northern Parkway 103rd Ave to 91st Ave-Phase 1** in the County of Maricopa, State of Arizona.

The following Proposal is made on behalf of

and no others. Evidence of authority to submit the proposal is herewith furnished. The proposal is in all respects fair and is made without collusion on the part of any person, firm, or corporation mentioned above, and no member or employee of the Board of Supervisors is personally or financially interested, directly or indirectly, in the proposal, or in any purchase or sale of any materials or supplies for the work to which it relates, or in any portion of the profits thereof.

The undersigned certifies that the approved Plans, Construction Specifications, Forms of Contract, Bonds, and Sureties authorized by the Board of Supervisors and constituting essential parts of this Proposal, have been carefully examined and also that the site of the work has been personally inspected.

The undersigned declares that the amount and nature of the work to be done is understood and that at no time will misunderstanding of the Plans, Construction Specifications, Special Provisions, or conditions to be overcome, be pled. On the basis of the Plans, Construction Specifications, Special Provisions, the Forms of Contract, Bonds, and Sureties proposed for use, the undersigned proposes to furnish all the necessary machinery, equipment, tools, apparatus, and other means of construction, to do all the work and to furnish all the materials in the manner specified and to finish the entire project within the time hereinafter proposed and to accept, as full compensation therefore, the sum of various products obtained by multiplying each unit price, herein bid for the work or materials, by the quantity thereof actually incorporated in the complete project, as determined by the County.

The undersigned understands that the quantities mentioned herein are approximate only and are subject to increase or decrease and hereby proposes to perform all quantities of work, as either increased or decreased, in accordance with the provisions of the specifications, at the unit price bid in the bidding schedule.

The undersigned further proposes to perform all extra work that may be required on the basis provided in the specifications and to give such work personal attention and to secure economical performance.

The undersigned further proposes to execute the Contract Agreement and furnish satisfactory bonds and sureties within 10 days of receipt of Notice of Proposal acceptance, **TIME BEING OF THE ESSENCE.**

All construction work on this contract is to be completed within **365 CALENDAR DAYS** beginning with the date specified in the Notice to Proceed. Exclusive of and following the contract time allowed for construction work are **120 CALENDAR DAYS** for

internal administrative purposes thereby resulting in a total contract performance period of **485 CALENDAR DAYS**.

The undersigned shall maintain at all times a Payment and Performance Bond, approved by the Board of Supervisors, each in an amount equal to 100 percent of the contract amount. This bond shall serve not only to guarantee the completion of the work on the part of the undersigned, but also to guarantee the excellence of both workmanship and material and the payment of all obligations incurred, said bonds and sureties to be in full force and effect until the work is finally accepted and the provisions of the Plans, Construction Specifications, and Special Provisions fulfilled.

A Proposal Guaranty in the amount and character named in the Invitation to Bids is enclosed amounting to not less than 10 percent of the total bid. The Proposal Guaranty is submitted as a guaranty of the good faith of the bidder and the bidder will enter into written contract, as provided, to do the work, if successful in securing the award thereof; and it is hereby agreed that if at any time other than as provided in the proposal requirements and conditions the undersigned should withdraw its proposal, if the proposal is accepted and there should be failure on the part of the undersigned to execute the contract and furnish satisfactory bonds and sureties as herein provided, the County of Maricopa in either of such events, shall be entitled and is hereby given the right to retain the said Proposal Guaranty as liquidated damages.

The undersigned has enclosed the required bid security to this proposal.

Upload or scan a copy your bid security in BidNet Direct (seal must be visible). If you are submitting certified check, cashier's check, or money order in lieu of the surety bond, upload a copy of the check in BidNet Direct with your electronic bid, and deliver the original check no later than 4:00 p.m. MST on the bid due date to: Office of Procurement Services, 301 W. Jefferson Street, 7th Floor, Phoenix, Arizona 85003. The envelope containing the certified check, cashier's check, or money order shall be addressed to Maricopa County and be identified with the project name, the bidder's name and address, and shall be marked with the words **Northern Parkway 103rd Ave to 91st Ave-Phase 1** , 260059-DBB.

All bonds must be pursuant to A.R.S. Title 34, Chapter 2, Article 2, and executed solely by a surety company or companies holding a Certificate of Authority to transact surety business in Arizona, issued by the Director of the State of Arizona Department of Insurance.

Bonds executed by an individual surety or sureties are not in compliance with Arizona Revised Statutes.

Bids received containing bid bonds not in compliance with the Arizona Revised Statutes will be considered non-responsive. The use of County-supplied bond forms is encouraged but is not mandatory.

IF BY AN INDIVIDUAL:

By:

(Printed Name)

(Title)

(Address)

(Signature)

(Date)

(Telephone Number)

(Fax Number)

(Email address)

IF BY A FIRM, PARTNERSHIP OR L.L.C. (LIMITED LIABILITY CORPORATION):

(Firm Name)

(Firm Address)

(Signature - Title)

(Date)

(Telephone Number)

(Fax Number)

(Email address)

**Name and Address of each Member, or each Manager of L.L.C. per Operating Agreement

**The name and post office address of each Member of the Firm or Partnership must be shown, or of each Manager of an L.L.C., also address of the registered office of the L.L.C.

IF BY A CORPORATION:

(Corporate Name)

(Corporation Address)

(Printed Name)

(Telephone Number)

(Title)

(Fax Number)

By:

(Signature)

(Date)

(Email address)

*Incorporated under the Laws of the State of _____ and Names and Addresses of Officers:

(President)

(Address)

(Secretary)

(Address)

(Treasurer)

(Address)

*The name of the State under which the Laws of the Corporation was Chartered, and the name, title, and business address of the President, Secretary, and Treasurer must be shown.

ATTACHMENT 2 – BID SCHEDULE

To All Interested Bidders: The bid response format for this solicitation has changed from past County construction contracts. In addition to submitting/uploading the required documents, **all pricing must be entered into BidNet Direct**, or your bid will be considered non-responsive. Allow yourself sufficient time to complete this process prior to the bid closing date/time.

ATTACHMENT 3 – SUBCONTRACTOR LISTING

The following is a listing of material suppliers and/or subcontractors which will be used by contractor in the event the undersigned enters into a contract with the County. No changes of the subcontractors and material suppliers named herein shall be made without the prior written approval of the County.

(Signature)

The contractor shall submit all subcontracts to the contracting agency and shall receive written consent from the chief construction engineer prior to the start of work. For each subcontract, the contractor shall complete the MCDOT Subcontract Request Form and submit it along with the entire subcontract for written approval. In accordance with MAG 108.2 (E), the contractor shall perform, with his own organization, work amounting to not less than 50 percent of the total contract cost.

The contractor agrees to execute a written contract with all subcontractors, DBEs and non-DBEs for work to be completed under this contract. The executed contract shall include subcontractor's Scope of Work and all the Uniform Terms and Conditions set forth in this contract.

The contractor shall provide electronic copies of signed subcontract agreements with all subcontractors within five days by uploading them to the ADOT LPA DBE contracts management system (<https://arizonalpa.dbesystem.com/>). Subcontract agreements must include all required assurances and required clauses as outlined in this contract. Each agreement and required attachment must be dated and signed by the subcontractor in order for the subcontract to be considered valid.

The contractor shall be in breach of this contract if the contractor materially modifies the Federal regulations and State statutes in its subcontract agreement's terms and conditions with its subcontractors. Deviations from the terms of this contract may result in termination of the contract, or any other such remedy as deemed appropriate by the County.

**ATTACHMENT 4 – CURRENT FORM OF SURETY, PAYMENT, AND
PERFORMANCE BONDS**

Documents follow.

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, (hereinafter called the Principal), and the _____, a corporation duly organized under the laws of the State of _____, as Surety, (hereinafter called the Surety), are held and firmly bound unto the Maricopa County Department of Transportation (hereinafter called the Obligee), in the sum of _____, **10 percent** of the total amount of the bid of Principal, submitted by him to the Obligee, for the work described below, for the payment of which sum, well and truly to be made, the said Principal and the said Surety, bind themselves, their heirs, executors, and administrators, successors and assigns, jointly and severally, firmly by these presents, and in conformance with the Arizona Revised Statutes.

WHEREAS, the said Principal is herewith submitting its proposal for **Serial #260059-DBB, Northern Parkway 103rd Ave to 91st Ave-Phase 1**

NOW, THEREFORE, if the Obligee accepts the proposal of the Principal and the Principal enters into a contract with the Obligee in accordance with the terms of the proposal and give the Bonds and Certificates of Insurance as specified in the Standard Specifications with good and sufficient Surety for the faithful performance of the contract and for the prompt payment of labor and material furnished in the prosecution of the contract, or in the event of the failure of the Principal to enter into the contract and give the Bonds and Certificates of Insurance, if the Principal pays the Obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise it remains in full force and effect, provided however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

Signed and sealed this _____ day of _____, A.D., 20____.

Agent of Record, State of Arizona

Agent Address and Phone Number:

Principal

By:

(Printed Name)

(Signature)

(Title)

Surety Name

Bond Number: _____

By:

(Printed Name)

By:

(Signature)

ATTACH SURETY POWER OF ATTORNEY

(Title)

**STATUTORY PAYMENT BOND
PURSUANT TO TITLE 34
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100 percent of the contract amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and

a corporation organized and existing under the laws of the State of __, with its principal
office in the City of _____ (hereinafter called the Surety), as Surety, are held
and firmly bound unto Maricopa County (hereinafter called the Obligee), in the amount of
_____, for the payment whereof, the said Principal
and Surety bind themselves, and their heirs, administrators, executors, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with the Obligee,
dated the _____ day of _____, 20__ for **Serial #260059-DBB,**
Northern Parkway 103rd Ave to 91st Ave-Phase 1 which contract is hereby referred to
and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the
said Principal promptly pays all monies due to all persons supplying labor or materials to the
Principal or the Principal's subcontractors in the prosecution of the work provided for in the
contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of
Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond
shall be determined in accordance with the provisions, conditions and limitations of Title 34,
Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if it was copied at
length in this Agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment
reasonable attorney's fees that may be fixed by the court or a judge thereof.

Witness our hands this _____ day of _____, 20__.

PRINCIPAL SEAL

BY: _____

AGENT OF RECORD, STATE OF AZ

AGENT ADDRESS SURETY SEAL

BOND NUMBER: _____ BY: _____

STATUTORY PERFORMANCE BOND
PURSUANT TO TITLE 34
CHAPTER 2, ARTICLE 2, OF THE ARIZONA REVISED STATUTES
(Penalty of this bond must be 100 percent of the Contract amount)

KNOW ALL MEN BY THESE PRESENTS:

That, _____ (hereinafter called the Principal), as Principal, and _____ a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto Maricopa County, (hereinafter called the Obligee) in the amount of _____, for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written contract with Obligee, dated the _____ day of _____, 20____, for **Serial #260059-DBB, Northern Parkway 103rd Ave to 91st Ave-Phase 1**, which contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said Principal shall faithfully perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said contract during the original term of said contract and any extension thereof, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety being hereby waived; then the above obligation shall be void, otherwise to remain in full force and effect;

PROVIDED, HOWEVER, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, of the Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of said Title, Chapter, and Article, to the extent as if it was copied at length herein.

The prevailing party in a suit on this bond shall be entitled to such reasonable attorney's fees as may be fixed by a judge of the court.

Witness our hands this ____ day of _____, 20____.

PRINCIPAL SEAL

AGENT OF RECORD, STATE OF AZ BY: _____

AGENT ADDRESS SURETY SEAL

BOND NUMBER: _____ BY: _____

**ATTACHMENT 5 – NON-COLLUSION AFFIDAVIT
AFFIDAVIT BY CONTRACTOR CERTIFYING THAT THERE WAS NO COLLUSION
IN BIDDING FOR CONTRACT**

STATE OF _____)
County of _____) ss.

_____ being first duly sworn, deposes and says:

That he/she is _____ of _____
(Title) (Name of Business)

bidding on **Serial #260059-DBB** for the construction of **Northern Parkway 103rd Ave to 91st Ave-Phase 1**, in the County of Maricopa, State of Arizona.

That, in connection with the above-mentioned project, neither he, nor anyone associated with the aforesaid business, has, directly or indirectly, participated in any collusion, entered into any contract, combination, conspiracy or other act in restraint of trade or commerce in violation of the provisions of Subsection 112(c) of Title 23, United States Code and Title 44, Chapter 10, Article 1, and Title 34, Chapter 2, and A.R.S. § 34-251, Article 4, as amended.

(Signature of Affiant)

Subscribed and sworn to before me this _____ day of _____, 20____.

(Notary Public)

My Commission Expires:

ATTACHMENT 6 – LEGAL WORKER CERTIFICATION

(Date)

Maricopa County
Office of Procurement Services – Article 5
301 W. Jefferson Street, Suite 700
Phoenix, Arizona 85003

As required by Arizona Revised Statutes § 41-4401, Maricopa County (County) is prohibited, after September 30, 2008, from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214-A. The undersigned entity warrants that it complies fully with all Federal immigration laws and regulations that relate to its employees, that it shall verify, through the employment verification pilot program as jointly administered by the U.S. Department of Homeland Security and the Social Security Administration or any of its successor programs, the employment eligibility of each employee hired after December 31, 2007, and that it shall require its subcontractors and sub-subcontractors to provide the same warranties to the below entity.

The undersigned acknowledges that a breach of this warranty by the below entity or by any subcontractor or sub-subcontractor under any contract resulting from this solicitation shall be deemed a material breach of the contract, and is grounds for penalties, including termination of the contract, by the County. The County retains the right to inspect the records of the below entity, subcontractor and sub-subcontractor employee who performs work under the contract, and to conduct random verification of the employment records of the below entity and any subcontractor and sub-subcontractor who works on the contract, to ensure that the below entity and each subcontractor and sub-subcontractor is complying with the warranties set forth above.

(Firm)

(Address Line 1)

(Print Name)

(Address Line 2)

(Print Title)

(Phone)

(Signature Required)

(Fax)

(Email Address)

(Federal Taxpayer ID Number)

ATTACHMENT 7 – VERIFICATION OF LICENSE

Pursuant to A.R.S. § 32-1169, I hereby state that I hold a current contractor's license, duly issued by the office of the Registrar of Contractors for the State of Arizona, said license has not been revoked, that the license number, classification, and expiration date is: _____

_____ ; that my privilege license number (as required by A.R.S. § 42-1305) is: _____ ; and that, if any exemption to the above licensing requirements is claimed:

(1) the basis for the claimed exemption is: _____ ; and

(2) the names(s) and license number(s) of any general, mechanical, electrical, or plumbing contractor(s) to be employed on the work are:

IT IS UNDERSTOOD THAT THE FILING OF AN APPLICATION CONTAINING FALSE OR INCORRECT INFORMATION CONCERNING AN APPLICANT'S CONTRACTOR'S LICENSE OR PRIVILEGE LICENSE WITH THE INTENT TO VOID SUCH LICENSING REQUIREMENTS IS UNSWORN FALSIFICATION PUNISHABLE ACCORDING TO A.R.S. § 13-2704.

DATE

SIGNATURE OF LICENSEE

COMPANY

ATTACHMENT 9 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

Instructions for Certification:

By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

1. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
4. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
5. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not

required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant are not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

(Name of Organization)

(Signature of Authorized Official)

(Name and Title of Authorized Official)

(Date)

ATTACHMENT 10 – DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See Exhibit 5 for public burden disclosure)

1. Type of Federal Action: _____ a. contract _____ b. grant _____ c. cooperative agreement _____ d. loan _____ e. loan guarantee _____ f. loan insurance	2. Status of Federal Action: _____ a. bid/offer/application _____ b. initial award _____ c. post-award	3. Report Type: _____ a. initial filing _____ b. material change
4. Name and Address of Reporting Entity: _____ Prime _____ Sub-awardee Tier _____, if known: Congressional District, if known:		5. If Reporting Entity in No. 4 is Sub-awardee, Enter Name and Address of Prime: Congressional District, if known:
6. Federal Department/Agency: 	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
7. Federal Action Number, if known: 	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i> 	b. Individuals Performing Services <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i> 	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Federal Use Only		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
		Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)

ATTACHMENT 11 – ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these **assurances** may not be applicable to your project or program. If you have questions, contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional **assurances**. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of **construction** plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the **construction** site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for **programs** funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in **construction** or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted **programs**. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333) regarding labor standards for federally-assisted **construction** sub-agreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable **construction** and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

**ATTACHMENT 12 – CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS
CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND
THE FILING OF REQUIRED REPORTS**

APRIL 1969

The bidder _____, proposed subcontractor _____,
hereby certifies that he has ____, has not ____, participated in a previous contract of subcontract subject to the
equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and
that he has ____, has not ____, filed with the Joint Reporting committee, the Director of the Office of Federal
Contract compliance, a Federal Government contracting or administering agency or the former President's
Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

(Company)

By

(Title)

(Date)

NOTE: The above certifications is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41-CFR 60-1.7b (1),) and must be submitted by bidders and proposed subcontractor's only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5 (Generally only contracts or subcontracts of \$10,000 or under are exempt).

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders of their implementing regulations.

Information concerning Standard Form 100 (EEO-1) is available from:

Joint Reporting Committee
P.O. Box 2236
Norfolk, VA 23501

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7 (b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, office of Federal Contract Compliance, U.S. Department of Labor.

ATTACHMENT 13 – AZ UTRACS REGISTRATION AND REQUIRED DBE DOCUMENT SUBMITTALS

AZ UTRACS Registration – Prime contractors and all subcontractors including DBEs must be registered in the AZ UTRACS web portal <https://utracs.azdot.gov/>.

To be considered for award, all bidders must submit the following affidavits and required documents within five (5) calendar days after bid opening date by 4 p.m.:

- [Online Bidder's List](#)

All bidders must complete an on-line bidders list at <https://utracs.azdot.gov/BiddersListInfo/> and, submit the corresponding Bidders List email confirmation notice to the Office of Procurement Services by 4:00 p.m. MST on the fifth calendar day after bids are opened.

- Good Faith Efforts – The bidder's good faith effort documentation must be submitted electronically through email to and received by the Office of Procurement Services by 4:00 p.m. MST on the fifth calendar day after the bids are opened.

**Maricopa County Department of Transportation
Title VI Assurances**

The **Maricopa County Department of Transportation** (herein referred to as the “Recipient”), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through *Federal Highway Administration and Arizona Department of Transportation*, is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda and/or guidance, the Recipient hereby gives assurances that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federal Aid Highway Program.

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal Aid Highway Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

*“The **Maricopa County Department of Transportation**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

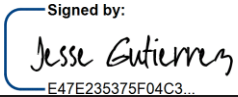
- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transference for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, **Maricopa County Department of Transportation** also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing *Federal Highway Administration or Arizona Department of Transportation* access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the *Federal Highway Administration or Arizona Department of Transportation*. You must keep records, reports, and submit the material for review upon request to *Federal Highway Administration, Arizona Department of Transportation*, or its designee in timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

Maricopa County Department of Transportation gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the *Federal Highway Administration and Arizona Department of Transportation*. This ASSURANCE is binding on Arizona, other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors, transferees, successors in interest, and any other participants in the *Federal Aid Highway Program*. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

Maricopa County Department of Transportation

(Name of Recipient)

by  **Signed by:**
E47E235375F04C3... **DATED** 5/6/2026
(Signature of Authorized Official)

Attachments
Appendices A and E

APPENDIX A

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

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration or the Arizona Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient, the Federal Highway Administration or Arizona Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will certify to the Recipient, the Federal Highway Administration, or Arizona Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration or Arizona Department of Transportation, may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient, the Federal Highway Administration, or Arizona Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects); Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited

English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et seq).

ATTACHMENT 15 – CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 20____, by and between MARICOPA COUNTY, hereinafter called the **COUNTY**, acting by and through its BOARD OF SUPERVISORS, and _____, hereinafter called **CONTRACTOR**.

WITNESSETH: That the said **CONTRACTOR**, for and in the consideration of the sum of _____, to be paid to him by the **COUNTY**, in the manner and at the times hereinafter provided, and of the other covenants and agreements herein contained, hereby agrees for himself, heirs, executors, administrators, successors, and assigns as follows:

ARTICLE I - SCOPE OF WORK: **CONTRACTOR** shall construct, and complete in a workmanlike and substantial manner and to the satisfaction of the Department of Transportation Director, a project for the Maricopa County Department of Transportation, designated as Serial # **260059-DBB, Northern Parkway 103rd Ave to 91st Ave-Phase 1**, and furnish at its own cost and expense all necessary machinery, equipment, tools, apparatus, materials, and labor to complete the work in the most substantial and workmanlike manner according to the Plans and Specifications on file with the Maricopa County Department of Transportation, and such modifications of the same and other directions that may be made by the Maricopa County Department of Transportation as provided herein.

ARTICLE II - CONTRACT DOCUMENTS: The Contract Documents (Invitation to Bids, Administrative Requirements, Supplementary General Provisions, Federal Contract Requirements, Plans, Construction Specifications, Addenda, if any, MCDOT Metric/English Supplement to MAG Uniform Standard Specifications for Public Works Construction, Maricopa County Association of Governments (MAG) Standard Specifications and Uniform Standard Details, latest revisions thereto, Proposal, Affidavits, Performance Bond, Payment Bond, Certificates of Insurance, and Change Orders, if any,) are by this reference made a part of this Contract and shall have the same effect as though all of the same were fully inserted herein.

ARTICLE III - TIME OF COMPLETION: **CONTRACTOR** further covenants and agrees at its own proper cost and expense, to do all work as aforesaid for the construction of said improvements and to completely construct the same and install the material therein, as called for by this agreement free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, stated in the proposal pamphlet.

ARTICLE IV - PAYMENTS: For and in consideration of the satisfactory performance of the work herein embraced as set forth in the Contract Documents, which are a part hereof and in accordance with the directions of the **COUNTY**, through its Engineer and to its satisfaction, the **COUNTY** agrees to pay the said **CONTRACTOR** the amount earned, computed from actual quantities of work performed and accepted or materials furnished at the unit bid price on the Proposal made a part hereof, and to make such payment in accordance with the requirements of A.R.S. § 34-221, as amended. **CONTRACTOR** agrees to discharge its obligations and make payments to its subcontractors and suppliers in accordance with A.R.S. § 32-1129.

ARTICLE V - TERMINATION: The **COUNTY** hereby gives notice that pursuant to A.R.S. § 38-511(A) this contract may be canceled without penalty or further obligation within three years after execution if any person significantly involved in initiation, negotiation, securing, drafting or creating a contract on behalf of the **COUNTY** is, at any time while the contract or any extension of the contract is in effect, an employer agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract. Cancellation under this section shall be effective when written notice from the Transportation Director of the **COUNTY** is received by all of the parties to the contract. In addition, the **COUNTY** may recoup any fee for commission paid or due to any

person significantly involved in initiation, negotiation, securing, drafting or creating the contract on behalf of the **COUNTY** from any other party to the contract arising as a result of the contract.

ARTICLE VI - NEGOTIATION CLAUSE: Recovery of damages related to expenses incurred by **CONTRACTOR** for a delay for which the **COUNTY** is responsible, which is unreasonable under the circumstances and which was not within the contemplation of the parties to the contract, shall be negotiated between **CONTRACTOR** and the **COUNTY**. This provision shall be construed so as to give full effect to any provision in the contract which requires notice of delays, provides for arbitration or other procedure for settlement or provides for liquidated damages.

ARTICLE VII - COMPLIANCE WITH LAWS: **CONTRACTOR** shall comply with all Federal, State and local ordinances and regulations. **CONTRACTOR's** signature on this contract certifies compliance with the provisions of the I-9 requirements of the Immigration Reform Control Act of 1986 for all personnel that **CONTRACTOR** and any subcontractors employ to complete this project. It is understood that the **COUNTY** shall conduct itself in accordance with the provisions of the Maricopa County Procurement Code.

The **CONTRACTOR** warrants that it is in compliance with A.R.S. § 41-4401 and further acknowledges:

- (1) That the **CONTRACTOR** and its sub-contractors, if any, warrant their compliance with all Federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, subsection A; after December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.
- (2) That a breach of a warranty under subsection 1 above, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the contracts;
- (3) That the contracting government entity retains the legal right to inspect the papers of any **CONTRACTOR** or sub-contractor employee who works on the contract to ensure that the **CONTRACTOR** or sub-contractor is complying with the warranty provided under subsection 1 above and that the **CONTRACTOR** agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection.
- (4) That nothing herein shall make any **CONTRACTOR** or sub-contractor an agent or employee of the contracting government entity.

ARTICLE VIII - DBE PROGRAM: The Maricopa County Department of Transportation will endeavor to ensure in every way possible that disadvantaged business enterprises shall have every opportunity to participate in providing professional services, purchased goods, and contractual services to the Maricopa County Department of Transportation without being discriminated against on the grounds of race, age, color, religion, sex, disability, or national origin.

ARTICLE IX - ANTI-DISCRIMINATION PROVISION: **CONTRACTOR** agrees not to discriminate against any employee or applicant for employment because of race, age, color, religion, sex, disability, or national origin, and further agrees not to engage in any unlawful employment practices. **CONTRACTOR** further agrees to insert the foregoing provision in all subcontracts hereunder.

ARTICLE X – INFLUENCE: As prescribed in MC1-1203 of the Maricopa County Procurement Code, any effort to influence an employee or agent to breach the Maricopa County Ethical Code of Conduct or any ethical conduct, may be grounds for Disbarment or Suspension under MC1-902.

An attempt to influence includes, but is not limited to:

1. A person offering or providing a gratuity, gift, tip, present, donation, money, entertainment or educational passes or tickets, or any type of valuable contribution or subsidy,;
2. That is offered or given with the intent to influence a decision, obtain a contract, garner favorable treatment, or gain favorable consideration of any kind.

If a person attempts to influence any employee or agent of Maricopa County, the chief procurement officer, or his designee, reserves the right to seek any remedy provided by the Maricopa County Procurement Code, any remedy in equity or in the law, or any remedy provided by this contract.

ARTICLE XI - UNIFORM ADMINISTRATIVE REQUIREMENTS: When applicable and by entering into this Contract the Contractor agrees to comply with all applicable provisions of Title 2, Subtitle A, Chapter II, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS contained in Title 2 C.F.R. § 200 et seq.

ARTICLE XII - SANCTIONS FOR NON COMPLIANCE WITH IMMIGRATION LAWS: For purposes of this paragraph, non-compliance refers to either the contractor's or subcontractor's failure to follow immigration laws or to the contractor's failure to provide records when requested. Failure to comply with the immigration laws or to submit proof of compliance constitutes a material breach of contract. At a minimum, the County will reduce the contractor's compensation by \$ 10,000 for the initial instance of non-compliance by the contractor or a subcontractor. If the same contractor or subcontractor is in non-compliance within two years from the initial non-compliance, the contractor's compensation will be reduced by a minimum of \$50,000 for each instance of non-compliance. The third instance by the same contractor or subcontractor within a two-year period may result, in addition to the minimum \$50,000 reduction in compensation, in removal of the offending contractor or subcontractor, suspension of work in whole or in part or, in the case of a third violation by the contractor, termination of the contract for default.

The sanctions described herein are the minimum sanctions; in case of major violations the County reserves the right to impose any sanctions up to and including termination, revocation of prequalification, and prohibition from participation in County contracts, regardless of the number of instances of non-compliance.

Contractors, subcontractors, and suppliers may appeal the sanctions to the County Engineer. That appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the County Engineer. The appeal must be received by the County Engineer no later than seven calendar days after the County's determination. The County Engineer shall promptly consider any appeals and notify the interested party of the County Engineer's findings and decision. The County Engineer's decision shall be considered administratively final.

Any delay resulting from a compliance verification or a sanction under this subsection is a non-excusable delay. The contractor is not entitled to any compensation or extension of time for any delays or additional costs resulting from a compliance verification or a sanction under these Special Provisions.

An example of the minimum sanctions under this subsection is presented in the following table:

Offense by:			Reduction in Compensation
Contractor	Subcontractor A	Subcontractor B	
First			\$10,000
	First		\$10,000

	Second		\$50,000
		First	\$10,000
	Third		\$50,000 *
Note: * Will, in addition, result in removal of the subcontractor, prohibition from participating in County contracts, and revocation of any County prequalification that the subcontractor may have obtained.			

ARTICLE XIII – COMPLIANCE WITH WEB CONTENT ACCESSIBILITY GUIDELINES

(WCAG): Contractor agrees and warrants that all of its web content services and products and all of its mobile apps services and products, covered under this contract, and in all languages provided, comply with Level A and Level AA success criteria and conformance requirements specified in the Web Content Accessibility Guidelines (WCAG) 2.1(AA) or will be modified to be compliant prior to delivery or installation to County. Contractor further agrees and warrants that all web content services and products and all mobile apps services and products, in all languages provided, shall remain in full compliance with the above WCAG success criteria and conformance requirements during the term of the contract. Contractor agrees to immediately notify County in the event it becomes aware that any web content services and products or any mobile apps services and products provided under this Contract become non-compliant with the above WCAG success criteria and conformance requirements, if applicable. In such an event, Contractor agrees it will work to remediate any identified compliance deficiencies and will notify County concerning the estimated remediation completion date. Upon request, Contractor shall provide County with documentation, including but not limited to a third-party assessment certificate, substantiating compliance of the services or products with the above WCAG success criteria and conformance requirements and any other applicable governmental regulations regarding accessibility. Non-compliance with the above WCAG success criteria and conformance requirements will be deemed a material breach of the contract and the County may immediately terminate the contract or impose other legal remedies at the County's discretion, including suspension of services and/or products. The County reserves the right to audit Contractor's compliance with the above WCAG success criteria and conformance requirements. The Contractor will indemnify, defend, and hold harmless the County against any third-party claims arising from the Contractor's non-compliance with the above WCAG success criteria and conformance requirements.

IN WITNESS WHEREOF: Five (5) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

Party of the First Part

By: _____
Printed Name

Signature

Title: _____

Date: _____

Tax Identification Number

**Maricopa County Department of Transportation
Party of the Second Part**

RECOMMENDED BY:

Jesse Gutierrez, P.E.
County Engineer/Transportation Director

Date: _____

LEGAL REVIEW:

Approved as to form and within the Powers and authority granted under the laws of the State of Arizona to Maricopa County.

By: _____
Deputy County Attorney

Date: _____

BOARD OF SUPERVISOR'S APPROVAL:

By: _____
Chair, Board of Supervisors

Date: _____

NIGP Code(s): 91327

ATTEST:

By: _____
Clerk of the Board

**EXHIBIT 1 – SAMPLE CERTIFICATE OF LIABILITY INSURANCE**

Maricopa County

SERIAL #260059-DBB, Northern Parkway 103rd Ave to 91st Ave-Phase 1

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. IF SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

NAME AND ADDRESS OF INSURANCE AGENCY:

*INSURERS AFFORDING COVERAGES: NAIC#

Company
Letter

A

Company
Letter

B

Company
Letter

C

NAME AND ADDRESS OF INSURED:

Company
Letter

D

Company
Letter

E

Company
Letter

F

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INS R LTR	TYPE OF INSURANCE	ADD L INSR	SUB R WVD	POLICY NUMBER	POLICY (MM/DD/YY)	EFF	POLICY EXP (MM/DD/YY)	LIMITS
	GENERAL LIABILITY: ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR ☒ BODILY INJURY ☒ BLANKET CONTRACTURAL ☒ BROAD FORM PROPERTY DAMAGE GEN'L AGGREGATE LIMIT APPLIES PER ☐ POLICY ☒ PROJECT ☐ LOCATION	X	X					EACH OCCURRENCE \$2,000,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS/ COMP/OP AGG \$4,000,000
	AUTOMOBILE LIABILITY: ☒ ANY AUTO ☒ ALL OWNED AUTOS ☒ HIRED AUTOS ☒ ALL NON-OWNED AUTOS	X	X					COMBINED SINGLE LIMIT \$2,000,000 (EA Accident) BODILY INJURY (Per Person) BODILY INJURY (Per Accident) PROPERTY DAMAGE (Per accident)
	☐ EXCESS/UMBRELLA LIABILITY ☐ Claims Made ☐ Occur ☐ Deductible ☐ Retention							EACH OCCURRENCE AGGREGATE
	☒ WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY Any Proprietor/Partner/Executive Office/Member Excluded ☐ YES ☐ NO If Yes describe under Special Provisions	N/A						☒ WC STATUTORY LIMITS E.L. EA ACCIDENT \$1,000,000 E.L. DISEASE: EACH EMPLOYEE \$1,000,000 E.L. DISEASE: POLICY LIMIT \$1,000,000

SPECIAL PROVISIONS: The policies required hereunder, except Workers' Compensation, contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials, and employees for any claims arising out of Contractors work or service. Except Workers' Compensation, the County, its agents, representatives, officers, directors, officials, employees, Arizona Department of Transportation, and State of Arizona are named as Additional Insureds. To the extent provided in this Contract, insured shall defend, indemnify, and hold harmless the County from liability arising out of any services provided or duty performed by insured as required by statute, law, purchase order or otherwise required, with the exception of liability for loss or damage resulting from the sole negligence of the County, its agents, employees, or indemnities. It is agreed that any insurance available to the named insured shall be primary of all other sources that may be available and insurance maintained by County shall not contribute to it. Renewal certificate must be sent to County 15 days prior to expiration date **THIS CERTIFICATE IS NOT VALID UNLESS COUNTERSIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE INSURANCE COMPANY.**

CERTIFICATE HOLDER

Maricopa County
c/o of Risk Management
301 W Jefferson St, Suite 910
Phoenix, AZ 85003

CANCELLATION

It is further agreed that no policy shall expire, be cancelled, or materially changed to affect the coverage available to the County without thirty (30) days written notice to the County.

AUTHORIZED REPRESENTATIVE SIGNATURE_____
DATE ISSUED

EXHIBIT 2 – INFORMATION FURNISHED PURSUANT TO THE NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

(Executive Order 11246)

Set forth in Paragraph 3 in Federal Register, Vol. 43, No. 68

Contract in Excess of \$10,000.00

TRACS/Project Number: _____

Termini: _____

Location: _____

Contractor Identification Number (as used on U.S. Treasury Department Form 941): _____

Name and Address of Contractor: _____

Telephone Number _____

Amount of Contract _____

Estimated Starting Date: _____

Estimated Completion Date: _____

Geographical Area: State of Arizona
(State)

(County)

(City)

(END OF SECTION)

DIVISION III – FEDERAL DOCUMENTS

- Exhibit 1 – Prohibition of Discrimination in State Contracts: Nondiscrimination in Employment by Government Contractors and Subcontractors
- Exhibit 2 – Federal Contract Requirements – Omb-133, Circular Compliance Requirements
- Exhibit 3 – Construction Contracts DBE Provisions
- Exhibit 3a – Construction And Professional Services/Design Contracts, Prompt Pay & Payment Reporting Provisions
- Exhibit 4 – Provide On-The-Job Training Provision
- Exhibit 5 - Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities
- Exhibit 6 – Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity
- Exhibit 7 – Equal Employment Opportunity Compliance Reports
- Exhibit 8 – Executive Order 11246 — Equal Employment Opportunity
- Exhibit 9 – Standard Federal Equal Employment Opportunity
- Exhibit 10 – Title 23: Highways, Subpart A—Equal Employment Opportunity on Federal and Federal-Aid Construction Contracts (Including Supportive Services)
- Exhibit 11 – Appendix A to Subpart A of Part 230—Special Provisions
- Exhibit 12 – Appendix B to Subpart A of Part 230—Training Special Provisions
- Exhibit 13 – General Information and Instructions
- Exhibit 14 – Appendixes E–F to Subpart A of Part 230 [Reserved]
- Exhibit 15 – Appendix G to Subpart A of Part 230 – Special Reporting Requirements for “Hometown” or “Imposed” Plan Areas
- Exhibit 16 – Notice to Contractors Amendments to "Required Contract Provisions All Federal-Aid Construction Contracts (Form FHWA 1273, Revised May1, 2012)"
- Exhibit 16A – Certificate of Non-Segregated Facilities
- Exhibit 17 – Labor Compliance and Payroll
- Exhibit 18 – Current Davis Bacon Wages Construction Type – Highway
- Exhibit 19 – Jobsite Required Poster List
- Exhibit 20 – Chapter I - Federal Highway Administration, Department of Transportation, Subchapter G - Engineering and Traffic Operations. (§ 635.110 Licensing and qualification of contractors)
- Exhibit 21 – Chapter I - Federal Highway Administration, Department of Transportation. Subchapter G - Engineering and Traffic Operations. (§ 635.410 Buy America requirements)
- Exhibit 22 – Waiver Of Buy America Requirements for Construction Materials for Certain Contracts and Solicitations
- Exhibit 23 – Build America Buy America Act (Baba) – Stored Specifications
- Exhibit 24 – Specifications
- Exhibit 25 - ADOT Disadvantaged Business Enterprise (DBE) Certification of Final Payment Construction

EXHIBIT 1 – PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS NONDISCRIMINATION IN EMPLOYMENT BY GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

Executive Order 2009-09

Superseding Executive Order 99-4 and Amending Executive Order 75-5

WHEREAS, Executive Order 99-4 was effectuated to assure that persons or entities contracting with the State of Arizona or its political subdivisions comply with the provisions of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et. seq.) and with Arizona's Civil Rights Act (Title 41, Chapter 9, Article 4);

WHEREAS, Executive Order 99-4 correctly states that various religious organizations are exempted from Arizona's Civil Rights Act;

WHEREAS, Executive Order 99-4 does not expressly state the Federal and state exemptions for Indian tribes under both the Federal and State Civil Rights Acts;

WHEREAS, 42 U.S.C. § 200e (b)(1) exempts tribes from the definition of employer;

WHEREAS, A.R.S. § 41-1461 4 (b) (i) also exempts Indian tribes from the definition of employers to whom the Arizona Civil Rights Act applies;

WHEREAS, Indian tribes across the State have recently begun to experience difficulty contracting with the State, often for money or services to which they are lawfully entitled, as a result of their exclusion from specified exemptions within Executive Order 99-4;

WHEREAS, the Attorney General's Office has in some cases interpreted the existing provisions as requiring tribes to waive rights guaranteed by both Federal and State law;

WHEREAS, a modification is necessary to expressly provide that the exemptions found in Federal and State law continue in full force and effect;

NOW, THEREFORE, I, Janice K. Brewer, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this State, hereby order and direct as follows:

1. Executive Order 75-5 is hereby amended as follows:

PART I. Non-discrimination in employment by government contractors and subcontractors.

Unless otherwise exempted by Federal or state civil rights laws, all government contracting agencies shall include in every government contract hereinafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, age, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, color, religion, sex or national origin. Such action shall include, but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to

be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

A continued Executive Order No. 75-5 is hereby amended to permit government contractors and subcontractors that are exempted from compliance under Title 41, chapter 9, article 4, Arizona Revised Statutes or 42 U.S.C. § 200e(b)(1), to provide employment preferences consistently with Federal and state statutes;

Therefore, Executive Order 75-5 does not apply to Indian tribes. It likewise does not apply to religious organizations with respect to the employment of individuals of a particular religion to perform work connected with the activities of the employer. It also provides that religious organizations may provide employment preferences based upon religion when dealing with a bona fide occupational qualification reasonably necessary to the operation of the religious organization. This is consistent with the provisions of the Civil Rights Act of 1964 (42 U.S.C. 2000e, et seq.). In addition, in the Personal Responsibility and Work Opportunity Reconciliation Act, P.L. 104-193, Congress provided that religious organizations are eligible for the receipt of Federal funds on the same basis as other private organizations.

Executive Order No. 75-5 prohibits all other government contractors and subcontractors from discriminating against any employee or applicant for employment because of race, age, color, religion, sex or national origin. Executive Order No. 75-5 further requires all government contractors and subcontractors to take action to ensure that applicants are employed and employees are treated during employment without regard to their race, age, color, religion, sex or national origin.

- B. The contractor will in all solicitations or advertisement for employees placed by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard of race, age, color, religion, sex or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under the Executive Order and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The contractor will furnish all information and reports required by the contracting agency and will permit access to his books, records, and accounts by the contracting agency and the Civil Rights Division for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- E. In the event of the contractor's noncompliance with the nondiscrimination clauses of the contract or with any such rules, regulations or orders of the Arizona Civil Rights Division said noncompliance will be considered a material breach of the contract and this contract may be cancelled, terminated or suspended, in whole or in part, and the contractor may be declared ineligible for future government contracts until said contractor has been found to be in compliance with the provisions of this order and the rules and regulations of the Arizona Civil Rights Division, and such sanctions may be imposed and remedies invoked as provided in Part II of this order, and the rules and regulations of the Arizona Civil Rights Division.
- F. The contractor will include the provisions of paragraphs A through E in every subcontractor purchase order so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to the subcontract or purchase orders the contracting agency may direct as a means of enforcing such provisions, including sanctions

for noncompliance, provided, however, that in the event the contractor becomes involved in or is threatened with litigation with a subcontractor or vender as a result of such direction by the contracting agency, the contractor may request the State of Arizona to enter into such litigation to protect the interest of the State of Arizona.

- G. Each contractor having a contract containing the provisions prescribed in this section shall file and shall cause each of his subcontractors to file compliance reports with the contracting agency or the Civil Rights Division, as may be directed. Compliance reports shall be filed within such times and shall contain such information as the practices, policies, programs and employment policies, programs and employment statistics of the contractor and each subcontract and shall be in form as the Arizona Civil Rights Division may prescribe.
- H. Bidders or prospective contractors of subcontractors shall be required to state whether they have participated in any previous contract subject to the provisions of this order or any preceding similar Executive Order and in such event to submit on behalf of themselves and the proposed subcontractor's compliance reports prior to, or as an initial part of negotiation of a contract.
- I. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers of providing or supervising apprenticeship or training for such workers, the compliance report shall include such information from such labor unions or agency practices and policies affecting compliance as the contracting agency or Civil Rights Division may prescribe: provided that, to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify the contracting agency as part of its compliance report and shall set forth what efforts he has made to obtain such information.
- J. The contracting agency or the Civil Rights Division shall require that the bidder or prospector contractor or subcontractor shall submit as part of his compliance report a statement in writing signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training with which the bidder or prospective contractor deals with supporting information to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purpose and provisions of this order. In the event that the union or the agency shall refuse to execute such a statement, the compliance shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the contracting agency or the Civil Rights Division may require.

PART II. Enforcement

- A. Each contracting agency shall be primarily responsible for obtaining compliance with this Executive Order with respect to contracts entered into by such agency or its contractors. All contracting agencies shall comply with the rules of the Civil Rights Division in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this order and the rules and regulations and orders of the Civil Rights Division issued pursuant to this order. They are directed to cooperate with the Civil Rights Division and to furnish the Division such information and assistance as it may require in the performance of the Division's functions under this order. They are further directed to appoint or designate from

among the agency personnel compliance officers. It shall be the duty of such officers to first seek compliance with the objective of this order by conference, conciliation, mediation or persuasion.

- B. The Civil Rights Division may investigate the employment practices of any government contractor if subcontractor of initiate such investigation by the appropriate contracting agency or determine whether or not the contractual provisions specified in this order have been violated. Such investigations shall be conducted in accordance with the procedures established by the Civil Rights Division and the investigating agencies shall report to the Civil Rights Division any action taken or recommended. The Civil Rights Division may receive and investigate or cause to be investigated complaints by employees or prospective employees of a government contractor or subcontractor which alleges discrimination contrary to the contractual provisions specified in Part I of this order. If the investigation is conducted for the Civil Rights Division by a contracting agency, that agency shall report to the Civil Rights Division what action has been taken or its recommendation with regard to such complaint.
- C. The Civil Rights Division shall use its best efforts directly and through contracting agencies, other interested state and local agencies, contractors and all other available instrumentalities to cause any labor union engaged in work under government contracts or any agency referring workers or providing or supervising apprenticeship or training for it in the course of such work or cooperate in the implementation of the purposes of this order.
- D. The Civil Rights Division or any agency, officer or employee in the executive branch of the government designated by rule, regulation or order of the Civil Rights Division may hold such hearings, public or private, as the Division may deem advisable for compliance, enforcement of educational purposes. The Civil Rights Division may hold or cause to be held hearings in accordance with rules and regulations issued by the Civil Rights Division prior to imposing, ordering or recommending the imposition of penalties and sanctions under this order.
- E. No order for debarment of any contractor from further government contracts under this order shall be made without affording the contractor an opportunity for a hearing.
- F. Sanctions and Penalties. In accordance with such rules, regulations or orders as the Civil Rights Division may issue or adopt, the Civil Rights Division or the appropriate contracting agency may publish or cause to be published the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order and with the rules, regulations and orders of the Civil Rights Division.
 - 1. Contracts may be cancelled, in whole or in part, terminated, or suspended absolutely, or continuation of contracts may be conditioned upon a program for future compliance approved by the contracting agency or the Civil Rights Division: provided that any contracting agency shall refrain from entering into further contracts, extensions or other modifications of existing contracts with any noncomplying contractor until such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this order.
 - 2. Under rules and regulations prescribed by the Civil Rights Division, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of conference, conciliation, mediation and persuasion before proceedings shall be instituted under this order of before a contract shall be cancelled or terminated in whole or in part under this

order for failure of a contractor or subcontractor to comply with the contract provisions of this order.

G. This Executive Order shall become effective immediately of its issuance.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Janice K. Brewer
GOVERNOR

DONE at the Capital in Phoenix, Arizona this 20th day of October
In the Year Two Thousand and Nine and of the Independence of
the United States of America the Two Hundred and Thirty-Third.

ATTEST:

Kim Blum

SECRETARY OF STATE

EXHIBIT 2 – FEDERAL CONTRACT REQUIREMENTS – OMB-133, CIRCULAR COMPLIANCE REQUIREMENTS

OMB-133 Circular Compliance Requirements.

Consultant/Contractor note: Not all of the following OMB-133 Circular Compliance requirements are applicable, A-133 was put into place to provide regulations for everyone receiving Federal grant monies either as a direct grant or subrecipient. For further information go to <http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm>.

1. **Activities Allowed or Unallowed:** Refer to Construction Special Provisions.

2. **Allowable Cost/Cost Principles:**

States, local governments, and Indian tribal governments are subject to OMB Circular A-87. All institutions of higher education are subject to the cost principles contained in OMB Circular A-21 which incorporates the four Cost Accounting Standards Board (CASB) Standards and the Disclosure Statement (DS-2) requirements as described in paragraphs C.10 through C.14 and Appendices A and B of OMB Circular A-21. Non-profit organizations are subject to OMB Circular A-122, except those non-profit organizations listed in Attachment C of OMB Circular A-122. These non-profit organizations are not subject to OMB Circular A-122 but are subject to the commercial cost principles contained in the Federal Acquisition Regulation (FAR). Also, by contract terms and conditions, some non-profit organizations may be subject to the CASB's Standards and the Disclosure Statement (DS-1) requirements.

The cost principles applicable to a non-Federal entity apply to all Federal awards received by the entity, regardless of whether the awards are received directly from the Federal Government or indirectly through a pass-through entity.

The circulars describe selected cost items, allowable and unallowable costs, and standard methodologies for calculating indirect costs rates (e.g., methodologies used to recover facilities and administrative costs (F&A) at institutions of higher education).

3. **Cash Management:**

Specify whether the contract is reimbursement contract or an advance payment contract. ***When entities are funded on a reimbursement basis, program costs must be paid for by entity funds before reimbursement is requested from the grantor. When funds are advanced, recipients must follow procedures to minimize the time elapsing between the transfer of funds from the grantor and disbursement.*** Submit all pertinent backup with payment requests: Progress Report Estimates, breakdown of direct/indirect costs and payments made to subconsultants/subcontractors.

If it is possible for the subrecipient to incur interest on Federal funds received, list procedures required to be followed. Interest earned on advances by local government grantees and subgrantees is required to be submitted promptly, but at least quarterly, to the Federal agency. Up to \$100 per year may be kept for administrative expenses. Interest earned by non-State nonprofit entities

on Federal fund balances in excess of \$250 is required to be remitted to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852.

Treasury regulations at 31 CFR part 205, which implement the Cash Management Improvement Act of 1990 (CMIA) (Pub. L. No. 101-453), require State recipients to enter into agreements, which prescribe specific methods of drawing down Federal funds (funding techniques), for selected large programs. The agreements also specify the terms and conditions in which an interest liability would be incurred. Programs not covered by a Treasury-State Agreement are subject to procedures prescribed by Treasury in Subpart B of 31 CFR part 205 (Subpart B).

The requirements for cash management are contained in the OMB Circular 102 (Paragraph 2.a.), the A-102 Common Rule ('___. 21), OMB Circular A-110 ('___. 22), Treasury regulations at 31 CFR part 205, Federal awarding agency regulations, and terms and conditions of the award.

4. Davis-Bacon Act:

When required by the Davis-Bacon Act, the Department of Labor's (DOL) government wide implementation of the Davis-Bacon Act, or by Federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2000 financed by Federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL (40 USC 276a to 276a-7).

5. Eligibility:

Specify the criteria for determining the individuals, groups of individuals, or subrecipients that can participate in the program and the amounts for which they qualify. State and Local All Hazards Emergency Operations Planning, \$200,000.

6. Equipment and Real Property Management:

Equipment Management

Title to equipment acquired by a non-Federal entity with Federal awards vests with the non-Federal entity. Equipment means tangible nonexpendable property, including exempt property, charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with a non-Federal entity's policy, lower limits may be established.

A State shall use, manage, and dispose of equipment acquired under a Federal grant in accordance with State laws and procedures. Subrecipients of States who are local governments or Indian tribes shall use State laws and procedures for equipment acquired under a subgrant from a State.

Local governments and Indian tribes shall follow the A-102 Common Rule for equipment acquired under Federal awards received directly from a Federal awarding agency. Institutions of higher education, hospitals, and other non-profit organizations shall follow the provisions of OMB Circular A-110. Basically, the A-102 Common Rule and OMB Circular A-110 require that equipment be used in the

program, which acquired it or, when appropriate, other Federal programs. Equipment records shall be maintained, a physical inventory of equipment shall be taken at least once every two years and reconciled to the equipment records, an appropriate control system shall be used to safeguard equipment, and equipment shall be adequately maintained. When equipment with a current per unit fair market value in excess of \$5000, is no longer needed for a Federal program, it may be retained or sold with the Federal agency having a right to a proportionate (percent of Federal participation in the cost of the original project) amount of the current fair market value. Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

The requirements for equipment are contained in the A-102 Common Rule ('____. 32), OMB Circular A-110 ('____. 34), Federal awarding agency program regulations, and the terms and conditions of the award.

Real Property Management

Title to real property acquired by non-Federal entities with Federal awards vests with the non-Federal entity. Real property shall be used for the originally authorized purpose as long as needed for that purpose. For non-Federal entities covered by OMB Circular A-110 and with written approval from the Federal awarding agency, the real property may be used in other Federally-sponsored projects or programs that have purposes consistent with those authorized for support by the Federal awarding agency. The non-Federal entity may not dispose of or encumber the title to real property without the prior consent of the awarding agency.

When real property is no longer needed for the Federally supported programs or projects, the non-Federal entity shall request disposition instructions from the awarding agency. (For purposes of this compliance requirement, the awarding agency for recipients under OMB Circular A-110 or the A-102 Common Rule and subrecipients under OMB Circular A-110 is the Federal agency providing the funding. The awarding agency for subrecipients under the A-102 Common Rule is the pass-through entity.) When real property is sold, sales procedures should provide for competition to the extent practicable and result in the highest possible return. If sold, non-Federal entities are normally required to remit to the awarding agency the Federal portion (based on the Federal participation in the project) of net sales proceeds. If retained, the non-Federal entity shall normally compensate the awarding agency for the Federal portion of the current fair market value of the property. Disposition instructions may also provide for transfer of title in which case, the non-Federal entity is entitled to compensation for its percentage share of the current fair market value.

The requirements for real property are contained in the A-102 Common Rule ('____. 31), OMB Circular A-110 ('____. 32), Federal awarding agency regulations, and the terms and conditions of the award.

7. Matching, Level of Effort, Earmarking:

Matching, level of effort and earmarking are defined as follows:

- (1) Matching or cost sharing includes requirements to provide contributions (usually non-Federal) of a specified amount or percentage to match Federal awards. Matching may be in the form of allowable costs incurred or in-kind contributions (including third-party in-kind contributions). **List applicable Matching requirements here.**
- (2) Level of effort includes requirements for (a) a specified level of service to be provided from period to period, (b) a specified level of expenditures from non-Federal or Federal sources for specified activities to be maintained from period to period, and (c) Federal funds to supplement and not supplant non-Federal funding of services. **List applicable Level of Effort requirements here.**
- (3) Earmarking includes requirements that specify the minimum and/or maximum amount or percentage of the program's funding that must/may be used for specified activities, including funds provided to subrecipients. Earmarking may also be specified in relation to the types of participants covered. **List all applicable Earmarking requirements here.**

For matching, the A-102 Common Rule ('____. 24) and OMB Circular A-110 ('____. 23) provide detailed criteria for acceptable costs and contributions. The following is a list of the basic criteria for acceptable matching:

- Are verifiable from the non-Federal entity's records.
- Are not included as contributions for any other Federally assisted project or program, unless specifically allowed by Federal program laws and regulations.
- Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- Are allowed under the applicable cost principles.
- Are not paid by the Federal Government under another award, except where authorized by Federal statute to be allowable for cost sharing or matching.
- Are provided for in the approved budget when requiring by the Federal awarding agency.
- Conform to other applicable provisions of the A-102 Common Rule and OMB Circular A-110 and the laws, regulations, and provisions of contract or grant agreements applicable to the program.

8. Period of availability of Federal funds:
Describe all applicable period of availability requirements here.

Federal awards may specify a time period during which the non-Federal entity may use the Federal funds. Where a funding period is specified, a non-Federal entity may charge to the award only costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency. Also, if authorized by the Federal program, unobligated balances may be carried over and charged for obligations of the subsequent funding period. Obligations means the

amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the non-Federal entity during the same or a future period (A-102 Common Rule, '____. 23; OMB Circular A-110, '____. 28).

Non-Federal entities subject to the A-102 Common Rule shall liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status report (SF-269). The Federal agency may extend this deadline upon request (A-102 Common Rule, '____. 23).

9. Procurement and Suspension and Debarment:

Procurement

States, and governmental subrecipients of States, shall use the same State policies and procedures used for procurements from non-Federal funds. They also shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations.

Local governments and Indian tribal governments which are not subrecipients of States will use their own procurement procedures provided that they conform to applicable Federal law and regulations and standards identified in the A-102 Common Rule.

Institutions of higher education, hospitals, and other non-profit organizations shall use procurement procedures that conform to applicable Federal law and regulations and standards identified in OMB Circular A-110. All non-Federal entities shall follow Federal laws and implementing regulations applicable to procurements, as noted in Federal agency implementation of the A-102 Common Rule and OMB Circular A-110.

Requirements for procurement are contained in the A-102 Common Rule ('____. 36), OMB Circular A-110 ('____. 40 through '____. 48), Federal awarding agency regulations, and the terms of the award. The specific references for the A-102 Common Rule and OMB Circular A-110, respectively are given for each procedure. (The first number listed refers to the A-102 Common Rule and the second refers to A-110.)

Suspension and Debarment

Non-Federal entities are prohibited from contracting with or making subawards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods or services equal to or in excess of \$100,000 and all non-procurement transactions (e.g., sub-awards to sub-recipients).

Contractors receiving individual awards for \$100,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. The non-Federal entities may rely upon the certification unless it knows that the certification is erroneous. ***Non-Federal entities may, but are not required to, check for suspended and debarred parties, which are listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs, issued by the General Services Administration (GSA). The information contained on the list is available in printed and electronic formats. The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 783-3238. The electronic version can be accessed on the Internet (<http://www.arnet.gov/epls>). Note that the user will be required to record their name and organization for purposes of the Computer Matching and Privacy Act of 1988.***

10. Program Income:

Program income is gross income received that is directly generated by the Federally funded project during the grant period. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income. Program income includes, but is not limited to, income from: fees for services performed, the use or rental of real or personal property acquired with grant funds, the sale of commodities or items fabricated under a grant agreement, and payments of principal and interest on loans made with grant funds. Except as otherwise provided in the Federal awarding agency regulations or terms and conditions of the award, program income does not include interest on grant funds (covered under Cash Management), rebates, credits, discounts, refunds, etc. (covered under Allowable Costs/Cost Principles), or interest earned on any of them (covered under Cash Management). Program income does not include the proceeds from the sale of equipment or real property (covered under Equipment and Real Property Management).

Program income may be used in one of three methods: deducted from outlays, added to the project budget, or used to meet matching requirements. Unless specified in the Federal awarding agency regulations or the terms and conditions of the award, program income shall be deducted from program outlays. However, for research and development activities by institutions of higher education, hospitals, and other non-profit organizations, the default method is to add program income to the project budget. Unless Federal awarding agency regulations or the terms and conditions of the award specify otherwise, non-Federal entities have no obligation to the Federal Government regarding program income earned after the end of the grant period.

The requirements for program income are found in the A-102 Common Rule ('____. 21(payment) and '____. 25), OMB Circular A-110 ('____. 2 (program income definition), '____. 22(payment), and '____. 24), Federal awarding agency laws, program regulations, and the provisions of the contract or grant agreements pertaining to the program.

11. Real Property Acquisitions and Relocation Assistance:

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) provides for uniform and equitable treatment of persons displaced by Federally-assisted programs from their homes, businesses, or farms. Property acquired must be appraised by qualified independent appraisers. All appraisals must be examined by a review appraiser to assure acceptability. After acceptance, the review appraiser certifies the recommended or approved value of the property for establishment of the offer of just compensation to the owner. Federal requirements govern the determination of payments for replacement housing assistance, rental assistance, and down payment assistance for individuals displaced by Federally funded projects. The regulations also cover the

payment of moving-related expenses and reestablishment expenses incurred by displaced businesses and farm operations.

Government wide requirements for real property acquisition and relocation assistance are contained in Department of Transportation's single government wide rule at 49 CFR part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally-Assisted Programs.

12. Reporting

Financial Reporting

Recipients should use the standard financial reporting forms or such other forms as may be authorized by OMB (approval is indicated by an OMB paperwork control number on the form). These other forms may include financial, performance, and special reporting. Each recipient must report program outlays and program income on a cash or accrual basis, as prescribed by the Federal awarding agency. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally maintained on the accrual basis, the recipient is not required to convert its accounting system to an accrual basis but may develop such accrual information through analysis. The awarding agency may accept identical information from the recipient in machine-readable format, computer printouts, or electronic outputs in lieu of the prescribed formats.

The reporting requirements for sub-recipients are as specified by the pass-through entity. In many cases, these will be the same as or similar to the following requirements for recipients.

The standard financial reporting forms are as follows:

- 1. Financial Status Report (FSR) (SF-269 (OMB No. 0348-0039) or SF-269A (OMB No. 0348-0038)). Recipients use the FSR to report the status of funds for all non-construction projects and for construction projects when the FSR is required in lieu of the SF-271.***
- 2. Request for Advance or Reimbursement (SF-270 (OMB No. 0348-0004)). Recipients use the SF-270 to request Treasury advance payments and reimbursements under non-construction programs.***
- 3. Outlay Report and Request for Reimbursement for Construction Programs (SF-271 (OMB No. 0348-0002)). Recipients use the SF-271 to request funds for construction projects unless advances or the SF-270 is used.***
- 4. Federal Cash Transactions Report (SF-272 (OMB No. 0348-0003) or SF-272-A (OMB No. 0348-0003)). Recipients use the SF-272 when payment is by advances or reimbursements. The awarding agency may waive***

the requirement for an SF-272 when electronic payment mechanisms provide adequate data.

Electronic versions of these standard forms are located on the OMB's Internet home page (<http://www.whitehouse.gov/OMB>)

Reporting requirements are contained in the following documents:

- a. A-102 Common Rule -- Financial reporting, '____. 41; Performance reporting, '____. 40(b).***
- b. OMB Circular A-110 -- Financial reporting, '____. 52; Performance reporting, '____. 51.***
- c. The laws, regulations, and the provisions of contract or grant agreements pertaining to the program.***

13. Subrecipient Monitoring:

If the subrecipient is permitted to pass through money to other subrecipients, then the following should be addressed in the contract, along with any specific requirements being enforced:

A pass-through entity is responsible for:

- Identifying to the subrecipient the Federal award information (e.g., CFDA title and number, award name, name of Federal agency) and applicable compliance requirements.
- Monitoring the subrecipient's activities to provide reasonable assurance that the subrecipient administers Federal awards in compliance with Federal requirements.
- Ensuring required audits are performed and requiring the subrecipient to take prompt corrective action on any audit findings.
- Evaluating the impact of subrecipient activities on the pass-through entity's ability to comply with applicable Federal regulations.

14. Special Tests and Provisions:

The specific requirements for Special Tests and Provisions are unique to each Federal program and are found in the laws, regulations, and the provisions of contract or grant agreements pertaining to the program.

"The following compliance requirements: Numbers 1, 2, 3, 4, 5, 8, 9, 12, and 13 listed above, are applicable to this program."

EXHIBIT 3 – CONSTRUCTION CONTRACTS DBE PROVISIONS

**** FOR USE ON LPA FEDERAL AID PROJECTS WITHOUT GOALS. ****

(LPA EPRISE WITHOUT DBE GOAL, 10/24/2025)

DISADVANTAGED BUSINESS ENTERPRISES:

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 Code of Federal Regulation Part 26 (49 CFR Part 26), as revised by the USDOT DBE Interim Final Rule (IFR) issued October 3, 2025 (hereinafter referred to as IFR).

The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26, as revised by the IFR.

It is the policy of the Department to ensure that DBEs (hereinafter DBE or DBE firm), as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

- (A) To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- (B) To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- (C) To ensure that the DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;
- (D) To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
- (E) To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
- (F) To assist in the development of firms that can compete successfully in the market place outside the DBE program and;
- (G) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

Local Public Agencies (LPA) and or Subrecipients of Federal financial assistance have adopted the Department's DBE Program Plan, adhere to the Department's DBE policy and will administer and manage the contracts from advertising, consultant selection, negotiation, contract execution, processing payment reports and contract modifications, audits, DBE compliance (e.g., reporting and monitoring) through contract closeout.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 as revised by the IFR in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the LPA/Subrecipient, with the Department's concurrence, deems appropriate, which may include, but not limited to:

- (A) Withholding monthly progress payments;
- (B) Assessing sanctions;
- (C) Disqualifying the contractor from future bidding as non-responsible.

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) **Commercially Useful Function (CUF):** Commercially Useful Function is defined in 49 CFR Part 26.55. That definition is incorporated herein by reference.

(B) **Disadvantaged Business Enterprise (DBE):** A DBE, as defined in 49 CFR Part 26.5, is a for-profit small business concern which meets both of the following requirements:

- (1) Is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and,
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) **Joint Check:** a two-party check between a subcontractor, DBE and/or non-DBE, a prime contractor and the regular dealer of material supplies.

(D) **Joint Venture:** an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their

property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

(E) **NAICS Code:** The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the US business economy.

(F) **Non-DBE:** any firm that is not a DBE.

(G) **DBE Conscious:** a measure or program that is focused specifically on assisting only DBEs.

(H) **DBE Neutral:** a measure or program that is, or can be, used to assist all small businesses.

(I) **Small Business Concern:** a business that meets all of the following conditions:

(1) Operates as a for-profit business;

(2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;

(3) Is independently owned and operated;

(4) Is not dominant in its field on a national basis; and

(5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(J) **Socially and Economically Disadvantaged Individuals:** Socially and Economically Disadvantaged Individuals is defined in 49 CFR Part 26.5, as revised by the IFR. That definition is incorporated here.

(1) Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on an individual basis.

(2) A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For

that reason, all applicants shall qualify as socially and economically disadvantaged if they can demonstrate that they can meet the relevant criteria described in 49 CFR Part 26.67.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All bidders should contact the Department's Business Engagement & Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction program of the Department. BECO contact information is as follows:

Arizona Department of Transportation
Business Engagement & Compliance Office
1801 W. Jefferson Street, Ste. 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712 7761
Email: LPAcontractorcompliance@azdot.gov
Website: azdot.gov/business/business-engagement-and-compliance

4.01 Business Development Program:

The Department has established the Business Development Program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The Department is committed to providing new, emerging, developmental and transitional DBEs with general and firm-specific training and technical assistance. The Department intends for this assistance to aid DBEs to become competitive within the heavy highway and construction industry market places. In particular, the Department's DBE Supportive Services Program (DBE/SS) is designed to work in collaboration with stakeholder organizations (including departments and agencies of State and Federal Governments, small business organizations, tribal governments, profit and nonprofit corporations) to help DBEs to successfully compete for highway construction projects and become self-sufficient. The program provides educational opportunities for DBEs regarding current market conditions, federal regulatory compliance, and best business practices. These efforts are reinforced with one-on-one business counseling for DBEs certified in areas that directly support Federal-aid highway projects, small group workshops, conferences, business expositions, regular in-person training opportunities, and regular virtual training opportunities. For guidance regarding this program, refer to the Business Development Program Guidelines available on the BECO website at azdot.gov/business/business-

The Business Development Program is intended to increase legitimate DBE activities. The program operates in conformity with the Federal DBE rules and regulations. The Department's DBE/SS participants may not circumvent the Federal DBE rules or regulations.

5.0 Applicability:

During the transition period, the IFR provides that until the Arizona Unified Certification Program (UCP) completes the recertification process, the Department may not 1) set any DBE contract goals or 2) count any participation towards its overall DBE goal.

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of DBE conscious and DBE neutral efforts once the DBE recertification process is completed in accordance with the IFR. DBE conscious participation occurs where the contractor uses a percentage of DBEs, as defined herein, to meet the contract-specified goal. DBE neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, as revised by the IFR describes DBE neutral participation as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

The DBE provisions are applicable to all bidders.

6.0 Certification and Registration:

6.01 DBE Certification:

Certification as a DBE shall be predicated on:

- (A) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".
- (B) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.
- (C) The submission of any additional information which the Department may require to determine the firm's eligibility to participate in the DBE program.
- (D) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Application Submission. Applications for Disadvantaged Business Enterprise (DBE) certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at utracs.azdot.gov/Home/.

Implementation of Revised Federal Standards. Effective October 3, 2025, all certification applications and renewals shall be reviewed and processed in accordance with the 49 CFR Part 26 as revised by the IFR. The revised rule modifies certification standards, documentation, and evidentiary requirements applicable to determinations of social and economic disadvantage, business size, ownership, and control.

Transition Period. During the transition period in which the Department and participating UCP agencies are updating internal procedures and the AZ UTRACS system to implement the revised rule, certification applications may continue to be submitted through the existing online platform. Applicants submitting applications during this period may be required to furnish additional or supplemental documentation consistent with the revised certification criteria upon system update or upon request by the certifying agency.

All applicants, whether filing initial or renewal applications, shall comply with any new or amended federal documentation requirements that become effective under 49 CFR Part 26 as revised by the IFR, including but not limited to personal narrative statements, financial disclosures, and supporting affidavits required to demonstrate eligibility under the revised standards.

The Department is a member of the AZ Unified Certification Program (AZUCP). During the transition period, the list of firms listed in AZ UTRACS were certified prior to October 3, 2025, not in accordance with the IFR, and therefore do not count for DBE credit, unless otherwise noted in AZ UTRACS. The list indicates contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, the Department does not guarantee the accuracy and/or completeness of this information, nor does the Department represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities; only that the firm has met the criteria for DBE certification as outlined in 49 CFR Part 26, as revised by the IFR. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.02 SBC Registration:

To comply with 49 CFR Part 26.39, the Department's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses authorized to do business in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization goals on projects, the Department and the LPA/Subrecipient encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement in accordance with the IFR. However, SBCs that are not DBEs will not be counted toward the DBE contract goal.

SBCs can register online at the AZ UTRACS website at utracs.azdot.gov/Home/. The registration of SBCs is not a representation of qualifications and/or abilities. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward the DBE contract goal.

The Department and the LPA/Subrecipient encourages prime contractors to research the Federal Reserve Board website at federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. When the

LPA/Subrecipient Procurement Office is closed for all or part of the last day, the period extends to the next day on which the LPA/Subrecipient Procurement Office is open.

10.0 Contractor and Subcontractor Requirements:

10.01 General:

The contractor shall establish a DBE program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.02 Blank:

11.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under 49 CFR Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. The Department collects this information through a Bidders/Proposers List when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at utracs.azdot.gov/Home/ a centralized database for companies that seek to do business with the Department. This information will be maintained as confidential to the extent allowed by Federal and State law.

All prime contractors, subcontractors, and DBEs shall: (1) register in AZ UTRACS, and (2) maintain their profile with current and accurate firm information. Bidders may verify that their firm and each subcontractor is registered using the AZ UTRACS website. Bidders may obtain additional information at the AZ UTRACS website or by contacting the LPA/Subrecipient.

Bidders shall create the Bidders/Proposers List in the AZ UTRACS by selecting all subcontractors, service providers, manufacturers and suppliers that expressed interest or submitted bids, proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, manufacturers and suppliers regardless of the bidders' intentions to use those firms on the project.

All bidders must complete the Bidders/Proposers List online at AZ UTRACS whether they are the apparent low bidder or not. A confirmation email will be generated by the system. The bidders shall submit to the LPA/Subrecipient a copy of the email confirmation no later than 4:00 p.m. on the fifth calendar day following the bid opening. Faxed copies are acceptable.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST TO THE LPA/SUBRECIPIENT PROCUREMENT OFFICE BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE BIDDER BEING DEEMED INELIGIBLE FOR AWARD OF THE CONTRACT.

12.0 DBE Goals:

During the transition period, the IFR provides that until the UCP completes the recertification process, the Department may not 1) set any DBE contract goals or 2) count any participation towards its overall DBE goal. The Department will not be counting any DBE conscious or DBE neutral efforts towards its overall DBE goal during this transitional period.

The Department has not established contract goals for DBE participation in this contract.

Contractors are still encouraged to employ reasonable means to obtain DBE neutral efforts. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only DBE neutral efforts are employed.

13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with Prompt Pay and Payment Reporting requirements section ____ of the contract specifications.

14.0 Crediting DBE Participation:

14.01 General Requirements:

During the transition period, the IFR provides that until the UCP completes the recertification process, the Department may not count any participation towards its overall DBE goal. This applies to both DBE conscious and DBE neutral efforts.

To count toward DBE participation, the DBE firm must be certified in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS under the Firm Directory. General descriptions of all NAICS codes can be found at www.naics.com.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation.

The contractor bears the responsibility to determine whether the DBE possesses the proper contractor's license(s) to perform the work.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of agreements such as: subcontract, purchase order, hourly rate, and rate per ton.

With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. DBE credit for any individual item of work performed by the DBE shall be the lesser of the amount to be paid to the DBE or the prime contractor's bid price. If the amount bid by the DBE on any item exceeds the prime contractor's bid amount, the prime contractor may not obtain credit by attributing the excess to other items.

Where more than one DBE is engaged to perform parts of an item (for example, supply and installation), the total amount payable to the DBEs will not be considered in excess of the prime contractor's bid amount for that item.

Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

If a DBE performs part of an item (for example, installation of materials purchased by a Non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's contract or (2) the prime contractor's bid for the item, less a reasonable deduction for the portion performed by the Non-DBE.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be credited.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a construction contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards DBE participation only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count towards DBE participation.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 Effect of Loss of DBE Eligibility:

If a DBE or a DBE prime contractor is deemed ineligible, decertified, or suspended by the Department in accordance with 49 CFR Part 26.87 and 49 CFR Part 26.88, the following provisions shall apply:

(A) If a DBE firm loses its DBE eligibility because the DBE firm was acquired by a non-DBE firm, no work performed by the DBE firm after the Decision Date will be counted toward DBE participation.

(B) If a subcontract, contract, or supplier arrangement has been executed before the Decision Date, work performed by the DBE firm will be counted toward DBE participation.

(C) If neither paragraph (A) nor paragraph (B) above applies, the work performed by the DBE firm after the Decision Date will be counted toward DBE participation.

(D) If the contractor extends or adds work to the DBE firm's subcontract, that work will not be counted towards DBE participation unless the contractor has obtained prior approval from the Department for DBE credit. Any requests to extend or add work to the DBE firm's subcontract to count towards DBE participation shall be submitted using the request form, made available on BECO's website at

azdot.gov/business/business-engagement-and-compliance/lpasubrecipient/contract-forms-specs to extend Decertified DBE contract for DBE credit.

(E) The Department will consent to such DBE credit only if the added work is within the foreseeable range of added work, given the circumstances of the original DBE contract.

(F) For the purposes of this subsection, "Decision Date" means the date the Department notifies the DBE that it has become ineligible, decertified, or suspended under 49 CFR Part 26.87(c)(4), (g).

14.03 Notifying the Contractor of DBE Certification Status:

Each DBE contract of any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.04 Police Officers:

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE performs a Commercially Useful Function (CUF).

In conformity with 49 CFR Part 26.55(c), a DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on

the project. To determine whether a DBE is performing a commercially useful function, the LPA/Subrecipient will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the LPA/Subrecipient will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected within normal industry practice for the type of work involved, the LPA/Subrecipient will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The LPA/Subrecipient will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The LPA/Subrecipient will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the LPA/Subrecipient's decision.

Decisions on CUF may be appealed to the Department's BECO. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the Department's BECO. The appeal must be received by the Department's BECO no later than seven calendar days after the decision of LPA/Subrecipient. LPA/Subrecipient decision remains in effect unless and until The Department's BECO reverses or modifies LPA/Subrecipient decision. The Department's BECO will promptly consider any appeals under this subsection and notify the contractor of the Department's BECO findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The LPA/Subrecipient will conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the LPA/Subrecipient staff will make every effort not to disrupt work on the project.

14.06 Trucking:

In conformity with 49 CFR Part 26.55(d), the LPA/Subrecipient will use the following factors in determining whether a DBE trucking company is performing a commercially useful function. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract on every day that credit is to be given for trucking. The contractor will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks with drivers from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE leased trucks with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks with drivers receives credit only for the fee or commission paid to the DBE as a result of the lease agreement.

Example: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example: DBE Firm X uses two of its own trucks on a contract. It leases three additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all five trucks.

For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name

and identification number of the DBE. Credit will be allowed only for those lease costs related to the time each truck is devoted to the project.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks. Leases for trucks must be long term (extending for a fixed time period and not related to time for contract performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

14.07 Materials and Supplies:

In conformity with 49 CFR Part 26.55(e), the LPA/Subrecipient will credit expenditures with DBEs for material and supplies towards the DBE goal as follows:

(A) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited.

(1) A DBE manufacturer is defined as: a firm that owns, or leases, and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

(2) Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

(B) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies, (including transportation costs), is credited.

(1) A DBE regular dealer is defined as: a firm that owns, or leases, and operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.

(a) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(b) Items kept and regularly sold by the DBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.

(2) A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, stone or asphalt without owning and operating a place of business, as provided above, if the person both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers’ own distribution equipment must be by a long-term operating lease, and not on an ad-hoc or contract-by-contract basis.

(3) A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies, including transportation cost, when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

(4) A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items as described above. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer.

(5) Packagers, brokers, manufacturers’ representatives, or other persons who arrange, facilitate or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

(C) If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, 40 percent of the cost of materials or supplies (including transportation costs) count for credit.

(1) A DBE distributor is defined as: an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance.

(2) A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third

party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor.

(3) If paragraph (1) and paragraph (2), above, are met, DBE distributors may receive 40 percent for drop-shipped items.

(4) Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(D) With respect to materials or supplies purchased from a DBE which is neither a manufacturer, a regular dealer, nor a distributor, the following standards shall apply:

(1) The LPA/Subrecipient will credit the entire amount of the fees or commissions charged by the DBE for: (1) assistance in the procurement of the materials and supplies, or (2) fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals.

(2) The LPA/Subrecipient will only credit the fees or commissions charged by the DBE if the Department determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) The cost of the materials and supplies themselves may not be counted toward the DBE goal.

(E) The LPA/Subrecipient will credit expenditures with DBEs for material and supplies (e.g. whether a firm is acting as a regular dealer, distributor or a transaction facilitator) towards the DBE goal on a contract-by-contract basis.

(F) The fact that a DBE firm qualifies under a classification (manufacturer, regular dealer, distributor or supplier) for one contract does not mean it will qualify for the same classification on another contract.

(G) The bidder shall be responsible for verifying whether a DBE qualifies as a DBE manufacturer, regular dealer, distributor or supplier.

(1) For each DBE firm listed as a regular dealer or distributor, the bidder must assess a DBE firm's eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor.

(2) To receive credit toward the DBE goal, the bidder shall use and submit the form made available on BECO's website at azdot.gov/business/business-engagement-and-compliance/lpasubrecipient/contract-forms-specs to affirm the DBE firm's capacity and intent to perform as a regular dealer or distributor.

15.0 Joint Checks:

15.01 Requirements:

A DBE subcontractor and a material supplier (or equipment supplier) may request permission for the use of joint checks for payments from the prime contractor to the DBE subcontractor and the supplier. Joint checks may be issued only if all the conditions in this subsection are met.

(A) The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.

(B) The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.

(C) A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.

(D) There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.

(E) Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.

(F) The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.

(G) The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.

(H) The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

15.02 Procedure and Compliance:

(A) BECO must approve the agreement for the use of joint checks in writing before any joint checks are issued. The prime contractor shall submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to LPA/Subrecipient and BECO through email within seven calendar days from the time the subcontract is executed.

(B) After obtaining authorization from BECO for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement by the LPA/Subrecipient.

(C) Copies of canceled checks must be submitted, with the payment information for the period in which the joint check was issued, electronically through email to LPA/Subrecipient Procurement Office and made available for review at the time of the onsite CUF review. The prime contractor, DBE, and supplier each have an independent duty to report to the LPA/Subrecipient in the case of any change from the approved joint check arrangement.

(D) Any failure to comply will be considered by the LPA/Subrecipient, with the Department's concurrence to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, or other remedies which may prevent future participation by the offending party.

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The contractor shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the LPA/Subrecipient no later than 30 days after the DBE completes its work.

The contractor will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the LPA/Subrecipient.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the USDOT any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible

initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.

**CONSTRUCTION AND PROFESSIONAL SERVICES/DESIGN CONTRACTS
PROMPT PAY AND PAYMENT REPORTING PROVISIONS**

** FOR USE ON LPA FEDERAL AID PROJECTS **

(07/24/2023)

MEASUREMENTS AND PAYMENT:

(A) Partial Payments:

If satisfactory progress is being made, the contractor shall receive a payment based on the amount of work completed. Progress payments may be made by the LPA/Subrecipient Procurement Office to the contractor on the basis of an approved estimate of the work performed during a preceding period of time. The progress payments will be paid on or before 14 days after the estimate of the work is approved. The estimate of the work will be deemed received by the LPA/Subrecipient Procurement Office on submission to the person designated by the LPA/Subrecipient Procurement Office for the submission, review or approval of the estimate of the work. The LPA/Subrecipient Procurement Office by mutual agreement may make progress payments on contracts of less than 90 days and will make monthly progress payments on all other contracts. Payment to the contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month under the contract may include payment for material and equipment.

An estimate of the work submitted will be deemed approved and certified for payment after seven days from the date of submission unless before that time the LPA/Subrecipient Procurement Office or Designee prepares and issues a specific written finding setting forth those items in detail in the estimate of the work that are not approved for payment under the contract. The contractor shall work with the LPA/Subrecipient or the LPA/Subrecipient Designee to finalize monthly estimate. The progress payments will be paid on or before 14 days after the estimate of the work is certified and approved in accordance with Arizona Revised Statutes Section 34-221.

The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor or material supplier, within seven days of receipt of each progress payment the respective amounts allowed the contractor or subcontractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest.

No contract for construction services may materially alter the rights of any contractor, subcontractor, or material supplier to receive prompt and timely payment.

A subcontractor may notify the LPA/Subrecipient Procurement Office in writing requesting that the subcontractor be notified by the Subrecipient Procurement Office in writing within five days from payment of each progress payment made to the contractor.

Prompt Pay and Payment Reporting Provisions- 1/5

(B) No Retainage on Progress Payments:

- (1) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, the LPA/Subrecipient Procurement Office will not withhold retainage from progress payments. Neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (2) This provision does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (a) Delayed work;
 - (b) Work that is not satisfactorily performed; or
 - (c) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.

(C) Subcontractor Payments:

(1) No Retainage:

- (a) This is a federally-funded project. Therefore, notwithstanding A.R.S. § 34-221, neither the contractor, nor the subcontractor of any tier, may withhold any retainage on progress payments to subcontractors or suppliers of any tier.
- (b) Pursuant to Subsection (B)(2) of this Specification, the contract does not prevent the LPA/Subrecipient Procurement Office from withholding retainage or reducing payments where otherwise provided in the contract. These cases may include, but are not limited to:
 - (i) Delayed work;
 - (ii) Work that is not satisfactorily performed; or
 - (iii) A failure to submit necessary reports, certifications, or documents to the LPA/Subrecipient Procurement Office.
- (c) When the LPA/Subrecipient Procurement Office withholds retainage or reduces payments under Subsection (B)(2) of this Specification, the contractor may withhold retainage on progress payments to subcontractors or suppliers of any tier. However, the contractor may only withhold a reasonable amount of retainage.
- (d) For the purpose of this section, a “reasonable amount” of retainage is based on the subcontractor’s involvement or the supplier’s involvement in the cause for the LPA/Subrecipient Procurement Office’s reduction of payment. The final amount retained from all subcontractors and suppliers shall not be higher than the amount retained by the LPA/Subrecipient. However, tier subcontracts shall include provisions that comply with this section.

Prompt Pay and Payment Reporting Provisions- 2/5

(2) No Set-offs Arising from Other Contracts:

If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

(3) Partial Payment:

The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the LPA/Subrecipient Procurement Office. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(4) Final Payment:

The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 34-221, the parties may not agree otherwise.

(5) Payment Reporting:

For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the LPA DBE System which can be accessed at AZ UTRACS on the Arizona Transportation Business Portal at www.azutracs.com. No later than fifteen calendar days after the preconstruction conference, the contractor shall log into the system and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter the subcontractor information in the LPA DBE System. Reportable contracts information shall be entered into the system no later than five calendar days after approval by the LPA/Subrecipient Procurement Office.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the last day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the LPA DBE System.

Prompt Pay and Payment Reporting Provisions- 3/5

In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract within 15 days of receipt of electronic payment notification and the contractor shall actively monitor the system to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the system between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract payment activity is in the LPA DBE System. This includes all lower-tier Reportable Contracts.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the system.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each month that the contractor fails to submit timely and complete payment information the LPA/Subrecipient Procurement Office will retain \$5,000 as sanctions from the monies due to the contractor. After 90 consecutive days of non-reporting, the sanctions will increase to \$10,000 for each subsequent month which the contractor fails to report until the information is provided. These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

(6) Completion of Work:

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the LPA/Subrecipient Procurement Office.

(7) Disputes:

If there is a discrepancy between what is reported by the contractor in the LPA DBE System and what the subcontractor indicates, an alert email will automatically be sent to the contractor. The email will be sent to the email address provided by the contractor in the LPA DBE System. It is the contractor's responsibility to ensure that the email address in the system is kept current.

The contractor shall provide a verifiable explanation of the discrepancy in the LPA DBE System as early as practicable but in no case later than seven days after the date of the alert email.

The LPA/Subrecipient will determine whether the contractor has acted in good faith concerning any such explanations. The LPA/Subrecipient and ADOT BECO reserves the right to request and receive documents from the contractor and all subcontractors of any

Prompt Pay and Payment Reporting Provisions- 4/5

tier, in order to determine whether prompt payment requirements are met.

The contractor shall implement and use the dispute resolution process outlined in the subcontract or by following the LPA/Subrecipient escalation process, to resolve payment disputes.

(8) Non-compliance:

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as the LPA/Subrecipient Procurement Office deems appropriate, which may include but are not limited to:

(a) Sanctions: These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

- (i) The LPA/Subrecipient Procurement Office will withhold two times the disputed dollar amount not paid to each subcontractor.
- (ii) If full payment is made within 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the amount withheld by the LPA/Subrecipient Procurement Office will be released.
- (iii) If full payment is made after 30 days of the LPA/Subrecipient Procurement Office's payment to the contractor, the LPA/Subrecipient Procurement Office will release 75 percent of the funds withheld. The LPA/Subrecipient Procurement Office will retain 25 percent of the monies withheld as sanctions.

(b) Additional Remedies. If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, the LPA/Subrecipient Procurement Office may, in addition, invoke the following remedies:

- (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the sanctions described in paragraph (a) above,
- (ii) Terminate the contract for default,
- (iii) Disqualify the contractor from future bidding, temporarily or
- (iv) permanently, depending on the number and severity of violations, if applicable.

In determining whether sanctions will be assessed, the extent of the sanctions, or additional remedies assessed, the LPA/Subrecipient will consider whether there have been other violations on this or other contracts, whether the failure to make prompt payment was due to circumstances beyond the contractor's control, and other circumstances. The contractor may, within 15 calendar days of receipt of the decision of the LPA/Subrecipient, escalate the decision according to the contract's escalation process.

EXHIBIT 4 – PROVIDE ON-THE-JOB TRAINING PROVISION

(R1/8/13)

DEPARTMENT OF TRANSPORTATION

PROVIDE ON-THE-JOB TRAINING PROVISION:

This provision is currently paused.

EXHIBIT 5 – INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

Instructions for Attachment 10

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

EXHIBIT 6 – NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

(Executive order 11246)

July 1, 1978 (Revised November 3, 1980)

(Revised April 15, 1981)

1. The bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

	Minority	Female
Tucson and balance of Pima County	24.1	6.9
Cochise, Graham, Greenlee and Santa Cruz Counties	27.0	6.9
Phoenix and balance of Maricopa County	15.8	6.9
Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai and Yuma Counties	19.6	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in all areas where he has Federal or Federally assisted work.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

EXHIBIT 7 – EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REPORTS

(Project, Training and Annual)
Federal-Aid Projects

February 1, 1977; Revised July 1, 1978; Revised November 3, 1980
Revised April 15, 1981; Revised September 7, 1983
Revised October 15, 1998; Revised August 1, 2005;
Revised March 1, 2015; Revised August 24, 2016

ANNUAL REPORT:

For each contract in the amount of \$10,000 or more, and for each subcontract, regardless of tier not including material suppliers, in the amount of \$10,000 or more, the contractor and each subcontractor regardless of tier shall submit an annual Equal Employment Opportunity (EEO) Report containing all the information required on Form FHWA-1391.

The staffing figures to be reported should represent the project workforce on board in all or any part of the last payroll period preceding the end of July.

The report shall be submitted no later August 15 to the agency (contract owner) compliance officer.

EXHIBIT 8 – EXECUTIVE ORDER 11246 — EQUAL EMPLOYMENT OPPORTUNITY

SOURCE: The provisions of Executive Order 11246 of Sept. 24, 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964-1965 Comp., p.339, unless otherwise noted.

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I — Nondiscrimination in Government Employment

[Part I superseded by EO 11478 of Aug. 8, 1969, 34 FR 12985, 3 CFR, 1966-1970 Comp., p. 803]

Part II - Nondiscrimination in Employment by Government Contractors and Subcontractors

Subpart A - Duties of the Secretary of Labor

SEC. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

[Sec. 201 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart B - Contractors' Agreements

SEC. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will

permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

[Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 203.

- a. Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.
- b. Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.
- c. Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or an agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.
- d. The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this Order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[Sec. 203 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684; EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 204

- a. The Secretary of Labor may, when the Secretary deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this **Order** in any specific contract, subcontract, or purchase **order**.
- b. The Secretary of Labor may, by rule or regulation, exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier.
- c. Section 202 of this **Order** shall not apply to a Government contractor or subcontractor that is a religious corporation, association, educational institution, or society, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities. Such contractors and subcontractors are not exempted or excused from complying with the other requirements contained in this **Order**.
- d. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor that are in all respects separate and distinct from activities of the contractor related to the performance of the contract: provided, that such an exemption will not interfere with or impede the effectuation of the purposes of this **Order**: and provided further, that in the absence of such an exemption all facilities shall be covered by the provisions of this **Order**."

[Sec. 204 amended by EO 13279 of Dec. 16, 2002, 67 FR 77141, 3 CFR, 2002 Comp., p. 77141 - 77144]

Subpart C - Powers and Duties of the Secretary of Labor and the Contracting Agencies

SEC. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

[Sec. 205 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 206.

- a. The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.
- b. The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

[Sec. 206 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 207. The Secretary of Labor shall use his/her best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 or other provision of Federal law.

[Sec. 207 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 208.

- a. The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.
- b. The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(6) shall be made without affording the contractor an opportunity for a hearing.

Subpart D - Sanctions and Penalties

SEC. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

1. Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.
2. Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.
3. Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964.
4. Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.
5. After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.
6. Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

[Sec. 209 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

[Sec. 210 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p 230]

SEC. 211. If the Secretary shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

[Sec. 211 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[Sec. 212 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

Subpart E - Certificates of Merit

SEC. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the labor union or other agency conform to the purposes and provisions of this Order.

SEC. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

SEC. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III - Nondiscrimination Provisions in Federally Assisted Construction Contracts

SEC. 301. Each executive department and agency, which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor, together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[Sec. 301 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 302.

- (1). "Construction contract" as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.
- (2). The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.
- (3). The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he/she becomes a recipient of such Federal assistance.

SEC. 303.

- a. The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.
- b. In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.
- c. In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[Sec. 303 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof and the regulations of the administering department or agency issued thereunder.

Part IV – Miscellaneous

SEC. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[Sec. 401 amended by EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230]

SEC. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

SEC. 403.

- a. Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Office of Personnel Management and the Secretary of Labor, as appropriate.
- b. Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

[Sec. 403 amended by EO 12107 of Dec. 28, 1978, 44 FR 1055, 3 CFR, 1978 Comp., p, 264]

SEC. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

SEC. 405. This Order shall become effective thirty days after the date of this Order.

EXHIBIT 9 – STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;

b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. “Minority” includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan.

Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other

Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the

group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week

in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(b) The notice set forth in 41 CFR 60-4.2 and the specifications set forth in 41 CFR 60-4.3 replace the New Form for Federal Equal Employment Opportunity Bid Conditions for Federal and Federally Assisted Construction published at 41 FR 32482 and commonly known as the Model Federal EEO Bid Conditions, and the New Form shall not be used after the regulations in 41 CFR part 60-4 become effective.

[43 FR 49254, Oct. 20, 1978; 43 FR 51401, Nov. 3, 1978, as amended at 45 FR 65978, Oct. 3, 1980; 79 FR 72995, Dec. 9, 2014]

EXHIBIT 10 – TITLE 23: HIGHWAYS, SUBPART A—EQUAL EMPLOYMENT OPPORTUNITY ON FEDERAL AND FEDERAL-AID CONSTRUCTION CONTRACTS (INCLUDING SUPPORTIVE SERVICES)

§ 230.121 Reports.

(a) Employment reports on Federal-aid highway construction contracts not subject to “Hometown” or “Imposed” plan requirements.

(1) Paragraph 10c of the special provisions (appendix A) sets forth specific reporting requirements. FHWA Form PR-1391, Federal-Aid Highway Construction Contractors Annual EEO Report, (appendix C) and FHWA Form PR 1392, Federal-Aid Highway Construction Summary of Employment Data (including minority breakdown) for all Federal-Aid Highway Projects for month ending July 31st, of each year, (appendix D) are to be used to fulfill these reporting requirements.

(2) Form PR 1391 is to be completed by each contractor and each subcontractor subject to this part for every month of July during which work is performed, and submitted to the State highway agency. A separate report is to be completed for each covered contract or subcontract. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month. The State highway agency is to forward a single copy of each report to the FHWA division office.

(3) Form PR 1392 is to be completed by the State highway agencies, summarizing the reports on PR 1391 for the month of July received from all active contractors and subcontractors. Three (3) copies of completed Forms PR 1392 are to be forwarded to the division office.

(b) Employment reports on direct Federal highway construction contracts not subject to “Hometown” or “Imposed” plan requirements. Forms PR 1391 (appendix C) and PR 1392 (appendix D) shall be used for reporting purposes as prescribed in § 230.121(a).

(c) Employment reports on direct Federal and Federal-aid highway construction contracts subject to “Hometown” or “Imposed” plan requirements.

(1) Reporting requirements for direct Federal and Federal-aid highway construction projects located in areas where “Hometown” or “Imposed” plans are in effect shall be in accordance with those issued by the U.S. Department of Labor, Office of Federal Contract Compliance.

(2) In order that we may comply with the U.S. Senate Committee on Public Works' request that the Federal Highway Administration submit a report annually on the status of the equal employment opportunity program, Form PR 1391 is to be completed annually by each contractor and each subcontractor holding contracts or subcontracts exceeding \$10,000 except as otherwise provided for under 23 U.S.C. 117. The employment data entered should reflect the work force on board during all or any part of the last payroll period preceding the end of the month of July.

(d) [Reserved]

(e) Reports on supportive services contracts. The State highway agency is to furnish copies of the reports received from supportive services contractors to the FHWA division office which will furnish a copy to the regional office.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978; 61 FR 14616, Apr. 3, 1996]

EXHIBIT 11 – APPENDIX A TO SUBPART A OF PART 230—SPECIAL PROVISIONS

Specific Equal Employment Opportunity Responsibilities

1. *General.* a. Equal employment opportunity requirements not to discriminate and to take affirmative action to assure equal employment opportunity as required by Executive Order 11246 and Executive Order 11375 are set forth in Required Contract, Provisions (Form PR-1273 or 1316, as appropriate) and these Special Provisions which are imposed pursuant to section 140 of title 23 U.S.C., as established by section 22 of the Federal-Aid Highway Act of 1968. The requirements set forth in these Special Provisions shall constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

b. The contractor will work with the State highway agencies and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

c. The contractor and all his/her subcontractors holding subcontracts not including material suppliers, of \$10,000 or more, will comply with the following minimum specific requirement activities of equal employment opportunity: (The equal employment opportunity requirements of Executive Order 11246, as set forth in volume 6, chapter 4, section 1, subsection 1 of the Federal-Aid Highway Program Manual, are applicable to material suppliers as well as contractors and subcontractors.) The contractor will include these requirements in every subcontract of \$10,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

2. *Equal Employment Opportunity Policy.* The contractor will accept as his operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a positive continuing program:

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, or national origin. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

3. *Equal Employment Opportunity Officer.* The contractor will designate and make known to the State highway agency contracting officers and equal employment opportunity officer (hereinafter referred to as the EEO Officer) who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of equal employment opportunity and who must be assigned adequate authority and responsibility to do so.

4. *Dissemination of Policy.* a. All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's equal employment opportunity policy and contractual responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

(1) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

(2) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the contractor's equal employment opportunity obligations within thirty days following their reporting for duty with the contractor.

(3) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the contractor's procedures for locating and hiring minority group employees.

b. In order to make the contractor's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, *i.e.*, schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the contractor will take the following actions:

(1) Notices and posters setting forth the contractor's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

(2) The contractor's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment. a. When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, the contractor will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with equal employment opportunity contract provisions. (The U.S. Department of Labor has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.

6. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, or national origin. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

7. *Training and Promotion.* a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, *i.e.*, apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event the Training Special Provision is provided under this contract, this subparagraph will be superseded as indicated in Attachment 2.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

8. *Unions.* If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, or national origin.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, or national origin; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the State highway agency.

9. *Subcontracting.* a. The contractor will use his best efforts to solicit bids from and to utilize minority group subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of minority-owned construction firms from State highway agency personnel.

b. The contractor will use his best efforts to ensure subcontractor compliance with their equal employment opportunity obligations.

10. *Records and Reports.* a. The contractor will keep such records as are necessary to determine compliance with the contractor's equal employment opportunity obligations. The records kept by the contractor will be designed to indicate:

(1) The number of minority and nonminority group members and women employed in each work classification on the project.

(2) The progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force),

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and

(4) The progress and efforts being made in securing the services of minority group subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

c. The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391. If on-the-job training is being required by "Training Special Provision", the contractor will be required to furnish Form FHWA 1409.

[40 FR 28053, July 3, 1975, as amended at 43 FR 19386, May 5, 1978. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

EXHIBIT 12 – APPENDIX B TO SUBPART A OF PART 230—TRAINING SPECIAL PROVISIONS

This Training Special Provision supersedes subparagraph 7b of the Special Provision entitled “Specific Equal Employment Opportunity Responsibilities,” (Attachment 1), and is in implementation of 23 U.S.C. 140(a).

As part of the contractor's equal employment opportunity affirmative action program training shall be provided as follows:

The contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.

The number of trainees to be trained under the special provisions will be ____ (amount to be filled in by State highway department).

In the event that a contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The contractor shall also ensure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the contractor shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the contractor shall specify the starting time for training in each of the classifications. The contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The contractor should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the contractor's records should document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the contractor and approved by the State highway agency and the Federal Highway Administration. The State highway agency and the Federal Highway Administration shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on

the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the contractor receives additional training program funds from other sources, provided such other does not specifically prohibit the contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the contractor where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.

No payment shall be made to the contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the contractor and evidences a lack of good faith on the part of the contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. A contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The contractor shall furnish the trainee a copy of the program he will follow in providing the training. The contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The contractor will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

[40 FR 28053, July 3, 1975. Correctly redesignated at 46 FR 21156, Apr. 9, 1981]

EXHIBIT 13 – GENERAL INFORMATION AND INSTRUCTIONS

This form is to be developed from the "Contractor's Annual EEO Report." The data is to be compiled by the State and submitted annually. It should reflect the total employment of all Federal-Aid Highway Projects in the State as of July 31st. The staffing figures to be reported should represent the project work force on board in all or any part of the last payroll period preceding the end of July. The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on-the-job trainees. Staffing figures to be reported in Table B should include only apprentices and on-the-job trainees as indicated.

Entries made for "Job Categories" are to be confined to the listing shown. Miscellaneous job classifications are to be incorporated in the most appropriate category listed on the form. All employees on projects should thus be accounted for.

This information will be used in complying with the U.S. Senate Committee on Public Works request that the Federal Highway Administration submit a report annually on the status of the Equal Employment Opportunity Program, its effectiveness, and progress made by the States and the Administration in carrying out Section 22(A) of the Federal-Aid Highway Act of 1968. In addition, the form should be used as a valuable tool for States to evaluate their own programs for ensuring equal opportunity.

It is requested that States submit this information annually to the FHWA Divisions no later than September 25.

LINE 01.- State and region Code. Enter the 4-digit code from the list below.

Alabama.....	01-04	Montana.....	30-08
Alaska.....	02-10	Nebraska.....	31-07
Arizona.....	04-09	Nevada.....	32-09
Arkansas.....	05-06	New Hampshire.....	33-01
California.....	06-09	New Jersey.....	34-01
Colorado.....	08-08	New Mexico.....	35-06
Connecticut.....	09-01	New York.....	36-01
Delaware.....	10-03	North Carolina.....	37-04
District of Columbia.....	11-03	North Dakota.....	38-08
Florida.....	12-04	Ohio.....	39-05
Georgia.....	13-04	Oklahoma.....	40-06
Hawaii.....	15-09	Oregon.....	41-10
Idaho.....	16-10	Pennsylvania.....	42-03
Illinois.....	17-05	Puerto Rico.....	43-01
Indiana.....	18-05	Rhode Island.....	44-01
Iowa.....	19-07	South Carolina.....	45-04
Kansas.....	20-07	South Dakota.....	46-08
Kentucky.....	21-04	Tennessee.....	47-04
Louisiana.....	22-06	Texas.....	48-06
Maine.....	23-01	Utah.....	49-08
Maryland.....	24-03	Vermont.....	50-01
Massachusetts.....	25-01	Virginia.....	51-03
Michigan.....	26-05	Washington.....	53-10
Minnesota.....	27-05	West Virginia.....	54-03
Mississippi.....	28-04	Wisconsin.....	55-05
Missouri.....	29-07	Wyoming.....	56-08

(23 U.S.C. sec. 140(a), 315, 49 CFR 1.48(b))

[44 FR 46832, Aug. 8, 1979. Correctly re-designated at 46 FR 21156, Apr. 9, 1981, and amended at 56 FR 4721, Feb. 6, 1991]

EXHIBIT 14 – APPENDIXES E–F TO SUBPART A OF PART 230 [RESERVED]

EXHIBIT 15 – APPENDIX G TO SUBPART A OF PART 230—SPECIAL REPORTING REQUIREMENTS FOR “HOMETOWN” OR “IMPOSED” PLAN AREAS

In addition to the reporting requirements set forth elsewhere in this contract the contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR-1391 (appendix C to 23 CFR part 230) and in accordance with the instructions included thereon.

[40 FR 28053, July 3, 1975. Correctly re-designated at 46 FR 21156, Apr. 9, 1981]

EXHIBIT 16 – REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273 – Revised October 23, 2023

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action.

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:

The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway, 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its procurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act; daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH-347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under [18 U.S.C. 1001](#) and [31 U.S.C. 3729](#).

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under [29 CFR part 6](#) any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeymen on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeymen under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, [18 U.S.C. 1001](#).

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#);

d. Informing any other person about their rights under the DBA, Related Acts, this part, or [29 CFR part 1](#) or [3](#).

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* \$31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its repurchase costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B)
This provision is applicable to all Federal-aid projects funded
under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT 16A – CERTIFICATE OF NON-SEGREGATED FACILITIES

(applicable to Federal-aid highway construction contracts and subcontracts over \$10,000)

(Submit this completed document in conjunction with your Performance and Payment Bonds)

We, _____ (Company)
Certify that we do not and will not maintain or provide for our employees any segregated facilities at any of our establishments, and that we do not and will not permit our employees to perform their services at any location, under our control, where segregated facilities are maintained. We understand and agree that breach of this certification is a violation of Equal Opportunity clause required by Executive Order 11246, amended.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise.

We further agree that (except where we have obtained identical certifications from proposed Subcontractors for specific time periods) we will obtain identical certifications from proposed Subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that we will retain such certification in our files; and that we will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NON-SEGREGATED FACILITIES. A certification of Non-segregated facilities as required by the 9 May 1967 order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, 19 May 1967), must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such contract or agreement exceed \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

NOTE: Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

(Name of Company)

By: _____

Date: _____

Title: _____

EXHIBIT 17 – LABOR COMPLIANCE AND PAYROLL

SPECIFICATIONS:

Reference is made to DIVISION III- FEDERAL DOCUMENTS, EXHIBIT 22, which incorporates Arizona Department of Transportation, Standard Specifications for Road and Bridge Construction, Edition 2008 (Pub. #31-066) into the contract.

Payroll Submittals:

If by the 15th of the month, the contractor has not submitted its payrolls for all work performed during the preceding month, the Engineer will provide written notification of the discrepancies to the contractor. For each payroll document that the CONTRACTOR fails to submit within 10 days after the written notification, the COUNTY will retain \$2,500 from the progress payment for the current month. The CONTRACTOR shall submit each complete and correct payroll within 90 days of the date of written notification. If the payroll is complete and correct within the 90-day time frame, the COUNTY will release the \$2,500 on the next monthly estimate. For each payroll that is not acceptable until after the 90-day time frame, the COUNTY will only release \$2,000 of the \$2,500.00 retained. The COUNTY will retain \$500.00 as liquidated damages. Such \$500 retentions will not relieve the CONTRACTOR of its responsibility to provide each required payroll, complete and correct, as specified above. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

Payroll Submittals – Additionally, require the following to be added to Standard Requirements:

The CONTRACTOR shall submit payrolls electronically through the internet to the MCDOT web-based payroll tracking system. This requirement shall also apply to every lower-tier subcontractor that is required to provide certified payroll reports.

EXHIBIT 18 – CURRENT DAVIS BACON WAGES CONSTRUCTION TYPE – HIGHWAY

" "General Decision Number: **AZ20260045 05/18/2026**

State: Arizona

Construction Types: Highway

Counties: Arizona Counties of
Maricopa

Modification Number	Publication Date
0	01/02/2026
1	05/18/2026

CARP1912-003 07/01/2024

Rates

Fringes

CARPENTER, EXCLUDES FORMWORK CONCRETE.....\$ 35.89
14.98

ENGI0012-046 12/01/2024

Rates

Fringes

POWER EQUIPMENT OPERATOR: BULLDOZER.....\$ 35.56
18.12

ENGI0012-053 12/01/2024

Rates

Fringes

POWER EQUIPMENT OPERATOR: TRACTOR.....\$ 35.56
18.12

ENGI0012-063 12/01/2024

Rates

Fringes

POWER EQUIPMENT OPERATOR: OILER.....\$ 32.29
18.12

ENGI0012-065 12/01/2024

Rates

Fringes

POWER EQUIPMENT OPERATOR: FIELD EQUIPMENT
SERVICEPERSON.....\$ 35.56
18.12

ENGI0012-066 12/01/2024

Rates

Fringes

POWER EQUIPMENT OPERATOR: BACKHOE/BACKHOE & LOADER
COMBO/TRACK BACKHOE.....\$ 35.56
18.12

ENGI0012-069 12/01/2024

Rates

Fringes

POWER EQUIPMENT OPERATOR: LOADER/FRONT END LOADER...\$ 35.56
18.12

ENGI0012-070 12/01/2024

Rates

Fringes
TRUCK DRIVER: OFF ROAD TRUCK.....\$ 35.56
18.12

ENGI0012-071 12/01/2024

Rates

Fringes
POWER EQUIPMENT OPERATOR: CRANE/DERRICK.....\$ 36.64
18.12

ENGI0012-072 12/01/2024

Rates

Fringes
POWER EQUIPMENT OPERATOR: EXCAVATOR/TRACKHOE
(GREATER THAN 1/2 CUBIC YARD).....\$ 36.64
18.12
POWER EQUIPMENT OPERATOR: EXCAVATOR/TRACKHOE (1/2
CUBIC YARD OR SMALLER).....\$ 35.56
18.12

ENGI0012-073 12/01/2024

Rates

Fringes
POWER EQUIPMENT OPERATOR: GRADE CHECKER.....\$ 36.64
18.12

ENGI0012-074 12/01/2024

Rates

Fringes
POWER EQUIPMENT OPERATOR: MOTOR GRADER/BLADE.....\$ 36.64
18.12

ENGI0012-075 12/01/2024

Rates
Fringes
POWER EQUIPMENT OPERATOR: MECHANIC.....\$ 37.67
18.12

IRON0075-014 08/01/2025

Rates
Fringes
IRONWORKER.....\$ 33.00
19.91

LABO1184-016 06/01/2025

Rates
Fringes
POWER EQUIPMENT OPERATOR: HORIZONTAL DIRECTIONAL
DRILL.....\$ 31.98
9.26

LABO1184-017 06/01/2025

Rates
Fringes
LABORER: FENCE ERECTOR.....\$ 27.41
9.26

LABO1184-021 06/01/2025

Rates
Fringes
TRAFFIC CONTROL.....\$ 27.41
9.26

LABO1184-025 06/01/2025

Rates
Fringes
LABORER: ASPHALT, INCLUDES RAKER, SHOVELER,

SPREADER AND DISTRIBUTOR.....\$ 29.91
9.26

LABO1184-027 06/01/2025

Rates

Fringes

LABORER: GRADE SETTER.....\$ 29.91
9.26

LABO1184-029 06/01/2025

Rates

Fringes

LABORER: GUARDRAIL INSTALLER.....\$ 29.91
9.26

LABO1184-033 06/01/2025

Rates

Fringes

POWER EQUIPMENT OPERATOR: TRENCHER.....\$ 30.88
9.26

LABO1184-044 06/01/2025

Rates

Fringes

POWER EQUIPMENT OPERATOR: FORKLIFT.....\$ 30.88
9.26

LABO1184-047 06/01/2025

Rates

Fringes

TRUCK DRIVER: CONCRETE.....\$ 30.88
9.26

LABO1184-049 06/01/2025

Rates

Fringes

TRUCK DRIVER: WATER.....\$ 30.88

9.26

LABO1184-051 06/01/2025

Rates

Fringes

GENERAL LABORERS.....\$ 27.41

9.26

SUAZ2023-022 11/19/2024

Rates

Fringes

TRUCK DRIVER: SWEEPER.....\$ 20.24

5.48

TRUCK DRIVER: OIL DISTRIBUTOR.....\$ 29.41

7.63

TRUCK DRIVER: DUMP.....\$ 26.71

7.09

POWER EQUIPMENT OPERATOR: SCRAPER.....\$ 29.69

0.00

POWER EQUIPMENT OPERATOR: PAVER/SPREADER/FINISH

EQUIPMENT (ASPHALT, AGGREGATE, & CONCRETE).....\$ 32.67

0.00

POWER EQUIPMENT OPERATOR: MILLING MACHINE.....\$ 31.16

0.00

POWER EQUIPMENT OPERATOR: DRILL RIG/AUGER.....\$ 36.80

13.07

POWER EQUIPMENT OPERATOR: CONCRETE SCREED.....\$ 26.41

7.64

POWER EQUIPMENT OPERATOR: CONCRETE PUMP TRUCK.....\$ 43.11

10.87

POWER EQUIPMENT OPERATOR: COMPACTOR/ROLLER.....\$ 30.24

0.00

POWER EQUIPMENT OPERATOR: BROOM/SWEEPER.....\$ 25.95

6.62

POWER EQUIPMENT OPERATOR: BOOM/CRANE TRUCK.....\$ 43.11
10.87
POWER EQUIPMENT OPERATOR: BOBCAT/SKID STEER/SKID
LOADER.....\$ 29.91
9.11
PAINTER: SIGN AND DISPLAY ERECTOR.....\$ 18.03
0.00
PAINTER: PAVEMENT MARKING.....\$ 23.35
6.34
LABORER: PIPELAYER.....\$ 25.97
7.09
LABORER: MASON TENDER.....\$ 25.92
7.09
LABORER: LANDSCAPE LABORER.....\$ 19.00
6.34
LABORER: CONCRETE SAW (HAND HELD/WALK BEHIND).....\$ 25.22
5.08
ELECTRICIAN.....\$ 29.00
7.58
CEMENT MASON/CONCRETE FINISHER.....\$ 30.41
0.00
CARPENTER: FORMWORK CONCRETE.....\$ 29.86
8.89

WELDERS - Receive rate prescribed for craft performing
operation to which welding is incidental.
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Note: Executive Order (EO) 13706, Establishing Paid Sick
Leave
for Federal Contractors applies to all contracts subject to
the
Davis-Bacon Act for which the contract is awarded (and any
solicitation was issued) on or after January 1, 2017. If
this
contract is covered by the EO, the contractor must provide
employees with 1 hour of paid sick leave for every 30 hours
they work, up to 56 hours of paid sick leave each year.
Employees must be permitted to use paid sick leave for
their

own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.65 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract from May 11, 2026, through December 31, 2026. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

Union Rate Identifiers

A four-letter identifier beginning with characters other than □SU□, □UAVG□, □SA□, or □SC□ denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated

rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio.

The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

Survey Rate Identifiers

The □SU□ identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may

include both union and non-union rates. Example: SUFL2022-007
6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

□SU□ wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

State Adopted Rate Identifiers

The □SA□ identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the □SA□ identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can

be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a

position on

a wage determination matter

d) an initial conformance (additional classification

and rate) determination

On survey related matters, initial contact, including requests

for summaries of surveys, should be directed to the WHD Branch

of Wage Surveys. Requests can be submitted via email to davisbaconinfo@dol.gov or by mail to:

Branch of Wage Surveys
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be

directed to the WHD Branch of Construction Wage Determinations.

Requests can be submitted via email to BCWD-Office@dol.gov or

by mail to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2) If an initial decision has been issued, then any interested

party (those affected by the action) that disagrees with the

decision can request review and reconsideration from the Wage

and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Requests for review and reconsideration can be submitted via

email to dba.reconsideration@dol.gov or by mail to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the

interested party's position and any information (wage payment

data, project description, area practice material, etc.) that

the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an

interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

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END OF GENERAL DECISION

EXHIBIT 19 – JOB BOARD REQUIREMENTS CHECK LIST

CONSTRUCTION JOB SITE POSTERS BOARD REQUIREMENTS – FHWA

Verify/update Jobsite Poster List with MCDOT PCI Division prior to releasing solicitation

SEE SAMPLE VERSION BELOW

Construction Bulletin Board Checklist

Project Name: _____

Date: _____

MCDOT Project No: _____

Inspector Name: _____

Federal Project No: _____

Board Location: _____

ADOT TRACS No: _____

Contractor: _____ Bulletin Board inspection should be performed at a minimum every 6 months

All posters need to be current; check the web sites for updates for the listed posters; list is subject change.

Conforming Yes No

1		Davis-Bacon Wage Decisions - Enter DB Wage Decision Number and MOD #
2		Approved Davis-Bacon Conformance Requests from DOL (when applicable)
3a		EEOC Know Your Rights: Workplace Discrimination is Illegal Poster (Executive Order No. 11246) (Rev 06.2023)
3b		Conozca sus Derechos: La Discriminación en el Lugar de Trabajo es Ilegal Poster (Executive Order No. 11246) Spanish (Rev 10.2022)
4a		Employee Rights Under The National Labor Relations Act Poster (Executive Order No. 13496) (Rev 05.02.2022)
4b		Derechos De Los Empleados Según La Ley Nacional De Relaciones Del Trabajo Poster Spanish (Rev 05.02.2022)
5a		"NOTICE" Federal-Aid Project Poster (FHWA-1022) (Rev 05.2015) (Note A)
5b		"AVISO" Federal-Aid Project Poster (FHWA-1022) Spanish (Rev 05.2015) (Note A)
6a		Job Safety and Health IT'S THE LAW Poster (OSHA 3165-04R) (Rev 2019)
6b		Seguridad y Salud en el Trabajo ES LA LEY Poster (OSHA 3167-04R) Spanish (Rev 2019)
7a		Employee Rights under the Davis-Bacon Act Poster (WH-1321) (Note B) (Rev 07.2024)
7b		Derechos Del Empleado Bajo La Ley Davis-Bacon Poster (WH-1321 SPA) Spanish (Note B) (Rev 07.2024)
8a		Employee Rights Under the Fair Labor Standards Act Poster (Minimum Wage) (WHD 1088) (Rev 04.2023)
8b		Derechos De Los Trabajadores Bajo La Ley De Normas Justas De Trabajo Poster (Minimum Wage) (WHD 1088SPA) Spanish (Rev 04.2023)
9a		Employee Rights - Employee Polygraph Protection Act Poster (WHD 1462) (Rev 02.2022)
9b		Derechos Del Empleado - Ley Para La Proteccion Del Empleado Contra La Prueba Del Poligrafo Poster (WHD 1462SP) Spanish (Rev 02.2022)
10a		Employee Rights and Responsibilities Under the Family and Medical Leave Act Poster (WHD 1420) (Rev 04.2023)
10b		Sus derechos como empleado según la ley de Licencia Médica y Familiar Poster (WH 1420SP) Spanish (Rev 04.2023)
11a		Pay Transparency Nondiscrimination Provisions Poster (Executive Order No. 11246) (Rev 12.2016)
11b		Transparencia En El Pago Disposicion Sobre No Discriminacion Poster (Executive Order No. 11246) Spanish (Rev 12.2016)
12a		Your Rights Under USERRA Poster (Rev 05.2022)
12b		Sus Derechos Bajo USERRA Poster (Rev 05.2022)
13		MCDOT's Title VI Notice to the Public Poster English and Spanish
14		Constructive Discharge (ARS 23-1502) (Rev 07.2013)
15		Arizona Law Discrimination is Prohibited in Employment Poster English and Spanish (Rev 08.2019)
16a		Notice to Employees: You are Covered by Unemployment Insurance Poster (POU-003) (Rev 02.2025)
16b		Aviso a Los Empleados: Están Cubiertos Por El Seguro Por Desempleo Poster (POU-003-S) Spanish (Rev 02.2025)
17a		Employee Safety and Health Protection Poster (ADOSH) (Rev 10.2011)
17b		Proteccion De Seguridad Y Sanidad Para El Empleado Poster (ADOSH) Spanish (Rev 10.2011)
18a		Smoke-free Arizona "No Smoking" Poster (ARS 36-601.01)
18b		Smoke-free Arizona "Gracias por No Fumar" Poster (ARS 36-601.01) Spanish
19a		Work Exposure to Bodily Fluids - Notice to Employees Poster (ICA Form 04-615-01) (Rev 09.2019)
19b		Exposicion a Fluidos Corporales En El Trabajo - Aviso A Los Empleados Poster (ICA Form 04-615-01) Spanish (Rev 09.2019)
20		Work Exposure to Methicillin-Resistant Staphylococcus Aureus (MRSA), Spinal Meningitis, or Tuberculosis (TB) Poster (Rev 07.2011)
21a		The Fair Wages and Healthy Families Act - Arizona's Minimum Wage Poster (for applicable year)
22b		Ley General de Salarios Justos y Familias Sanas - El Salarios Minimo en Arizona Poster Spanish (for applicable year) Spanish
23a		The Fair Wages and Healthy Families Act - Earned Paid Sick Time Poster (Rev 07.2017)
23b		Ley General De Salarios Justos Y Familias Sanas - Tiempo Pagado por Enfermedad Devengado Poster Spanish (Rev 07.2017)
24		Notice to Employees - RE: Arizona Worker's Compensation Law (Contractor to Fill in Policy Number) English and Spanish
25		Contractor's Arizona Department of Environmental Quality (ADEQ) Notice of Intent (NOI) for storm water discharge. If No, note why
26		Prime Contractor EEO Policy Statement
27		Name and telephone number of the Contractor's EEO policy Enforcement Officer
28		Subcontractor's EEO Policy Statement
29		Name and telephone number of the Prime Contractor's Safety Supervisor
30		Name and telephone number of each Subcontractor's Safety Supervisor

31			Emergency contact telephone numbers
32			Is the bulletin board a sufficient size to accommodate the information

Inspector Signature _____

***Bulletin Board inspection should be performed at a minimum every 6 months
All posters need to be current; check the different agency web sites for
updates of the listed posters; list is subject change.***

Note A: (No. 4A, 4B): FHWA 1022 Fraud

"State Transportation Agency":

Maricopa County Department of Transportation
4000 N Central #1500 Attn: Chief Construction Engineer
Phoenix, AZ 85012
2901 W. Durango St., Phoenix, AZ 85009

"Federal Highway Administration ":

Links to Construction Bulletin Board Posters

Note B: (No. 6A, 6B): Worker Rights -WH-

1321 Information to add: Maricopa County
Department of Transportation
Attn: Chief Construction Engineer
2901 W. Durango St., Phoenix, AZ 85009

Links to Construction Bulletin Board Posters

<https://www.fhwa.dot.gov/programadmin/contracts/poster.cfm>

<https://www.azica.gov/posters-employers-must-display>

<https://hr.az.gov/Required-Workplace-Posters>

<https://www.maricopa.gov/761/Title-VI-Nondiscrimination-Program>

<https://www.azica.gov/claims-workers-compensation-compliance-poster>

Revision Date: 07/2026

Requirements for Posting Notices and Posters:

Contractor is responsible for posting all notices and posters in accordance with the Federal and state requirements. A list of the state required notices and posters can be found on the Industrial Commission of Arizona website.

[Code of Federal Regulations] [Title 23, Volume 1] [Revised as of April 1, 2004]
From the U.S. Government Printing Office via GPO Access [CITE: 23CFR635.109]

**EXHIBIT 19 – TITLE 23: HIGHWAYS, CHAPTER I: FEDERAL HIGHWAY ADMINISTRATION,
DEPARTMENT OF TRANSPORTATION, SUBCHAPTER G: ENGINEERING AND TRAFFIC
OPERATIONS**

PART 635: CONSTRUCTION AND MAINTENANCE

Subpart A: Contract Procedures

635.109 - Standardized changed condition clauses.

(a) Except as provided in paragraph (b) of this section, the following changed conditions contract clauses shall be made part of, and incorporated in, each highway construction project approved under 23 U.S.C. 106:

(1) Differing site conditions.

(i) During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the site is disturbed and before the affected work is performed.

(ii) Upon written notification, the engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The engineer will notify the contractor of the determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment which results in a benefit to the contractor will be allowed unless the contractor has provided the required written notice.

(iv) No contract adjustment will be allowed under this clause for any effects caused on unchanged work. (This provision may be omitted by the STD's at their option.)

(2) Suspensions of work ordered by the engineer.

(i) If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within 7 calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

(ii) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(iii) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(iv) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(3) Significant changes in the character of work.

(i) The engineer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the contractor agrees to perform the work as altered.

(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.

(iii) If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

(iv) The term significant change shall be construed to apply only to the following circumstances:

(A) When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or

(B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed

(b) The provisions of this section shall be governed by the following:

(1) Where State statute does not permit one or more of the contract clauses included in paragraph (a) of this section, the State statute shall prevail and such clause or clauses need not be made applicable to Federal-aid highway contracts.

(2) Where the State transportation department has developed and implemented one or more of the contract clauses included in paragraph (a) of this section, such clause or clauses, as developed by the State transportation department may be included in Federal-aid highway contracts in lieu of the corresponding clause or clauses in paragraph (a) of this section. The State's action must be pursuant to a specific State statute requiring differing contract conditions clauses. Such State developed clause or clauses, however, must be in conformance with 23 U.S.C., 23 CFR and other applicable Federal statutes and regulations as appropriate and shall be subject to the Division Administrator's approval as part of the PS&E.

(c) In the case of a design-build project, STDs are strongly encouraged to use suspensions of work ordered by the engineer clauses, and may consider differing site condition clauses and significant

changes in the character of work clauses which are appropriate for the risk and responsibilities that are shared with the design-builder.

[56 FR 37004, Aug. 2, 1991; 57 FR 10062, Mar. 23, 1992, as amended at 67 FR 75925, Dec. 10, 2002]

Title 23 - Highways Volume: 1

Date: 2003-04-01

Original Date: 2003-04-01

Title: Section 635.110 - Licensing and qualification of contractors.

Context: Title 23 - Highways.

**EXHIBIT 20 – CHAPTER I: FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION, SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS**

PART 635 - CONSTRUCTION AND MAINTENANCE.

Subpart A - Contract Procedures.

§ 635.110 Licensing and qualification of contractors.

(a) The procedures and requirements a STD proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator.

(b) No procedure or requirement for bonding, insurance, prequalification, qualification, or licensing of contractors shall be approved which, in the judgment of the Division Administrator, may operate to restrict competition, to prevent submission of a bid by, or to prohibit the consideration of a bid submitted by, any responsible contractor, whether resident or nonresident of the State wherein the work is to be performed.

(c) No contractor shall be required by law, regulation, or practice to obtain a license before submission of a bid or before the bid may be considered for award of a contract. This, however, is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding. Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating.

Code of Federal Regulations/Title 23 - Highways/Vol. 1/2003-04-01175

(d) Requirements for the prequalification, qualification or licensing of contractors, that operate to govern the amount of work that may be bid upon by, or may be awarded to, a contractor, shall be approved only if based upon a full and appropriate evaluation of the contractor's capability to perform the work.

(e) Contractors who are currently suspended, debarred or voluntarily excluded under 49 CFR part 29 or otherwise determined to be ineligible shall be prohibited from participating in the Federal-aid highway program.

(f) In the case of a design-build project, the STDs may use their own bonding, insurance, licensing, qualification or prequalification procedure for any phase of design-build procurement.

(1) The STDs may not impose statutory or administrative requirements which provide an in-State or local geographical preference in the solicitation, licensing, qualification, pre-qualification, short listing or selection process. The geographic location of a firm's office may not be one of the selection criteria. However, the STDs may require the successful design-builder to establish a local office after the award of contract.

(2) If required by State statute, local statute, or administrative policy, the STDs may require prequalification for construction contractors. The STDs may require offerors to demonstrate the ability of their engineering staff to become licensed in that State as a condition of responsiveness; however, licensing procedures may not serve as a barrier for the consideration of otherwise responsive proposals. The STDs may require compliance with appropriate State or local licensing practices as a condition of contract award.

[56 FR 37004, Aug. 2, 1991, as amended at 67 FR 75925, Dec. 10, 2002]

Title 23 - Highways Volume: 1

Date: 2003-04-01

Original Date: 2003-04-01

Title: Section 635.410 - Buy America requirements.

Context: Title 23 - Highways.

EXHIBIT 21 – CHAPTER I - FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. SUBCHAPTER G - ENGINEERING AND TRAFFIC OPERATIONS

PART 635 - CONSTRUCTION AND MAINTENANCE

Subpart D - General Material Requirements.

§ 635.410 Buy America requirements

(a) The provisions of this section shall prevail and be given precedence over any requirements of this subpart which are contrary to this section. However, nothing in this section shall be construed to be contrary to the requirements of § 635.409(a) of this subpart.

(b) No Federal-aid highway construction project is to be authorized for advertisement or otherwise authorized to proceed unless at least one of the following requirements is met:

(1) The project either: (i) Includes no permanently incorporated steel or iron materials, or (ii) if steel or iron materials are to be used, all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied.

(2) The State has standard contract provisions that require the use of domestic materials and products, including steel and iron materials, to the same or greater extent as the provisions set forth in this section.

(3) The State elects to include alternate bid provisions for foreign and domestic steel and iron materials which comply with the following requirements. Any procedure for obtaining alternate bids based on furnishing foreign steel and iron materials which is acceptable to the Division Administrator may be used. The contract provisions must (i) require all bidders to submit a bid based on furnishing domestic steel and iron materials, and (ii) clearly state that the contract will be awarded to the bidder who submits the lowest total bid based on furnishing domestic steel and iron materials unless such total bid exceeds the lowest total bid based on furnishing foreign steel and iron materials by more than 25 percent.

(4) When steel and iron materials are used in a project, the requirements of this section do not prevent a minimal use of foreign steel and iron materials, if the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. For purposes of this paragraph, the cost is that shown to be the value of the steel and iron products as they are delivered to the project.

(c)(1) A State may request a waiver of the provisions of this section if;

(i) The application of those provisions would be inconsistent with the public interest; or

(ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of a satisfactory quality.

(2) A request for waiver, accompanied by supporting information, must be submitted in writing to the Regional Federal Highway Administrator (RFHWA) through the FHWA Division Administrator. A

request must be submitted sufficiently in advance of the need for the waiver in order to allow time for proper review and action on the request. The RFHWA will have approval authority on the request.

(3) Requests for waivers may be made for specific projects, or for certain materials or products in specific geographic areas, or for combinations of both, depending on the circumstances.

(4) The denial of the request by the RFHWA may be appealed by the State to the Federal Highway Administrator (Administrator), whose action on the request shall be considered administratively final.

(5) A request for a waiver which involves nationwide public interest or availability issues or more than one FHWA region may be submitted by the RFHWA to the Administrator for action.

(6) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a nationwide waiver and FHWA's action on such a request may be published in the Federal Register for public comment.

(7) In determining whether the waivers described in paragraph (c)(1) of this section will be granted, the FHWA will consider all appropriate factors including, but not limited to, cost, administrative burden, and delay that would be imposed if the provision were not waived.

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(d) Standard State and Federal-aid contract procedures may be used to assure compliance with the requirements of this section.

[48 FR 53104, Nov. 25, 1983, as amended at 49 FR 18821, May 3, 1984; 58 FR 38975, July 21, 1993]
Editorial Note: For a waiver document affecting § 635.410, see 60 FR 15478, Mar. 24, 1995.

EXHIBIT 22 – WAIVER OF BUY AMERICA REQUIREMENTS FOR CONSTRUCTION MATERIALS FOR CERTAIN CONTRACTS AND SOLICITATIONS

BILLING CODE 4910-9X

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Waiver of Buy America Requirements for Construction Materials for Certain Contracts and Solicitations

ACTION: Notice.

SUMMARY: The Department of Transportation (DOT) seeks to maximize the use of American-made products and materials in all federally funded projects as part of the Biden-Harris Administration's implementation of the Build America, Buy America Act (BABA), which was included in the historic Bipartisan Infrastructure Law (BIL). In this notice, DOT is taking two actions to help transition to the new construction materials standard. First, for DOT awards obligated on or after the effective date of the final waiver, DOT is waiving the BABA construction materials requirements for any contracts entered into before November 10, 2022. Second, DOT is waiving the BABA construction materials requirements for any contracts entered into before March 10, 2023, that result from solicitations published before May 14, 2022. For contracts executed after May 14, 2022, the waiver does not apply to any construction materials that a contractor or subcontractor takes delivery of on or after October 1, 2024.

DATES: The waiver is applicable to awards that are obligated on or after January 30, 2023. For awards that are obligated on or after November 10, 2022, but prior to January 30, 2023, this waiver is applicable to expenditures for construction materials incurred on or after January 30, 2023.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at darren.timothy@dot.gov or at 202-366-4051. For legal questions, please contact Michael A.

Smith, DOT Office of the General Counsel, 202-366-2917, or via e-mail at

michael.a.smith@dot.gov.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In January 2021, President Biden issued Executive Order 14005, titled “Ensuring the Future is Made in All of America by All of America’s Workers,” launching a whole-of-government initiative to strengthen Made in America standards. The Executive Order states that the United States Government “should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.” DOT is committed to ensuring strong and effective Buy America implementation consistent with Executive Order 14005 and has a long track record of successfully applying Made in America standards to support American workers and businesses through its more than \$70 billion in grant programs and \$700 million in direct purchases in FY 2020.

On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA or the Bipartisan Infrastructure Law), Pub. L. No. 117-58, which includes the Build America, Buy America Act (BABA). IIJA div. G §§ 70901-27. The Bipartisan Infrastructure Law not only makes an historic investment in American transportation—from roads and bridges to rail to transit—but also greatly strengthens Made in America standards. Specifically, BABA expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. BABA requires that no later than May 14, 2022—180 days after the date of enactment—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure ... may be obligated

for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” IIJA § 70914(a).

BABA provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. IIJA § 70917(a)–(b). This provision allows Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by BABA.

One of the new Buy America preferences included under BABA is for construction materials. By May 14, 2022, each covered Federal agency must ensure that all manufacturing processes for construction materials used in federally assisted infrastructure projects occur in the United States. None of the specific statutes that apply particular Buy America requirements to the Federal financial assistance programs administered by DOT’s Operating Administrations specifically covers construction materials, other than to the extent that such materials would already be considered iron, steel, or manufactured products. IIJA § 70914.

In addition to establishing Buy America preferences, BABA also provides certain statutory authorities for the Made in America Office (MIAO) in the Office of Management and Budget (OMB). IIJA §§ 70915(b), 70923. MIAO was first established by Section 4 of Executive Order 14005. MIAO’s authorities under the Bipartisan Infrastructure Law include issuing guidance to assist in applying BABA’s requirements and issuing standards that define the term “all manufacturing processes” in the case of construction materials. IIJA § 70915.

On April 18, 2022, OMB issued memorandum M-22-11, “[Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs](#)”

[for Infrastructure](#)” (Implementation Guidance). Under Section VIII of the Implementation

Guidance, “construction materials” includes:

an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Implementation Guidance at 13-14.

The Implementation Guidance states that “an article, material, or supply should only be classified into one of the following categories: (1) iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories.” *Id.* at 6. The Implementation Guidance also explains that “items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.” *Id.* at 14. OMB characterizes its guidance on which materials are construction materials as “preliminary and non-binding guidance ... so that agencies can begin applying Buy America requirements to those materials.” *Id.* at 13.

Section 70915(b) of BABA requires OMB to issue standards that define “all manufacturing processes” for construction materials. Section VIII of the Implementation Guidance provides that, “[p]ending MIAO’s issuance of final standards on construction materials, and absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider ‘all manufacturing processes’ for construction materials to mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.” Implementation Guidance at 14. After considering information received through stakeholder and industry outreach, MIAO will issue further guidance that identifies initial manufacturing processes for each type of construction material that should be considered as part of “all manufacturing processes.” *Id.* Agencies are also directed to “consult with MIAO, as needed, to ensure that any waiver issued for construction materials is explicitly targeted and time-limited, in order to send a clear market signal that additional standards for ‘all manufacturing processes’ in the case of construction materials will be forthcoming.” *Id.*

In April 2022, DOT opened a public docket (DOT-OST-2022-0047) to receive comments in response to DOT’s proposal to waive the construction materials requirement for 180 days, to allow for a longer transition period. On May 19, 2022, DOT issued a temporary waiver of the construction materials requirement for 180 days: from May 14 until November 10, 2022. [87 FR 31931](#). In the waiver notice, DOT stated its expectation that States, industry, and other participants establish procedures to document compliance.

During the waiver period, DOT continued its engagement to help facilitate the creation of robust enforcement and compliance mechanisms and to rapidly encourage domestic sourcing of construction materials for transportation infrastructure improvements. On July 28, 2022, DOT

issued a Request for Information (RFI) seeking input from the public, including DOT's project sponsors, their contractors and offerors, manufacturers, labor unions, transportation and trade associations, and other interested parties on implementing BABA's new construction materials requirement. [87 FR 45397](#). DOT asked the public to submit comments to the same docket DOT used to propose the 180-day waiver.

ISSUANCE OF THE PROPOSED WAIVER AND DISCUSSION OF COMMENTS RECEIVED

In accordance with Section 70914(b)(1) of the Act, on November 4, 2022, DOT published a notice on its website describing certain actions that the Department was taking. First, based on its review of comments received on the RFI and other engagement opportunities with stakeholders, and consistent with the purpose of the temporary transitional waiver, DOT announced that it would not modify or extend the temporary waiver for construction materials. As a result, DOT awards obligated on or after November 10, 2022, from financial assistance programs for infrastructure projects, are subject to the BABA requirement that construction materials used on those projects be produced in the United States.

The notice also sought comment on whether DOT should use its authority to provide a waiver of the Buy America requirement for construction materials on certain DOT-assisted infrastructure projects, on the basis that applying the domestic content preference for these materials would be inconsistent with the public interest.¹ DOT proposed that, for awards

¹ Because the application of Buy America to construction materials is required under BIL § 70914, the authority for this waiver is also based on BIL § 70914. Therefore, reference to, and reliance on, the waiver authority under specific Buy America provisions that are administered by the Department, such as 49 U.S.C. § 50101 (FAA); 23 U.S.C. § 313 (FHWA); 49 U.S.C. § 22905(a) (FRA); 49 U.S.C. § 5323(j) (FTA); and 46 U.S.C. § 54101(d)(2)(MARAD), is unnecessary.

obligated on or after the effective date of the waiver, DOT would waive BABA's domestic preference for construction materials for:

- (1) Any contract entered into before November 10, 2022; and
- (2) Any contract entered into before March 10, 2023, if the contract results from a solicitation published prior to May 14, 2022.

To maximize notice to affected stakeholders, the Department also announced the proposal on several email distribution lists related to the operating administrations' existing Buy America requirements and published the notice in the Federal Register. [87 FR 68572](#).

DOT received 41 comments in response to the publication from a wide array of stakeholders, including State transportation agencies, public transit agencies, airport operators, construction firms, manufacturers and suppliers, and labor organizations, as well as associations representing each of those groups.² The majority of commenters supported DOT's proposal to issue a waiver of the BABA requirements for construction materials for certain contracts and solicitations. However, certain commenters also expressed concerns about the Department's proposed action, which are discussed in more detail below.

DOT specifically requested comments on the applicable dates proposed in the notice. Some commenters supported extending the dates for contracts and solicitations that would be covered by the waiver, including several State Departments of Transportation, two public transit agencies, Associated General Contractors, and Airports Council International – North America. However, other commenters, including the Alliance for American Manufacturing (AAM), raised concerns about the proposal to waive BABA requirements for

² See the U.S. Government electronic docket site at <http://www.regulations.gov/>, Docket: DOT-OST-2022-0123.

construction materials for certain projects that may be obligating funds into 2023. Overall, DOT continues to believe that the cut-off dates for contracts and solicitations specified in the proposed waiver strike a reasonable balance between minimizing undue burdens for projects that already have executed construction contracts or issued solicitations, but for which DOT funds may be obligated in the future and moving forward to fully implement the BABA requirements for construction materials on DOT-assisted infrastructure projects in a timely manner. However, to address concerns about applying the waiver to construction materials that may be used on projects in the distant future, DOT has added an additional limitation on the applicability of the waiver, as described below.

Some commenters also expressed a desire for DOT to reconsider its decision not to extend the broader temporary waiver for construction materials. As the Department stated in the proposed waiver notice, based on its review of comments received on the RFI and other engagement opportunities with stakeholders, and consistent with the purpose of the temporary transitional waiver, DOT does not believe that an extension of that waiver is warranted.

Certain commenters also raised concerns or requested clarifications on the standards that should be applied when considering whether “all manufacturing processes” have occurred in the U.S., as is required for construction materials under BABA. As noted above, OMB issued preliminary standards for construction materials in its Implementation Guidance, which will remain in effect until final standards have been adopted by OMB. DOT considers these comments to be outside of the scope of this waiver action.

Two commenters asked about whether the waiver would be applied retroactively to projects obligating funds between the expiration of the temporary general waiver for construction materials on November 10 and the effective date of the new waiver for certain contracts and

solicitations. DOT did not propose that the new waiver would be effective on November 10, and is not doing so in this final action, which is to be effective on the date this notice is posted on the DOT Made in America website. Accordingly, this waiver does not apply to activities that would be reimbursed from grants obligated between November 10 and the effective date of this notice.

DOT also requested comments on the following: (1) whether the waiver should be time-limited or phased for certain long-term contracts, and (2) whether there are other scenarios where project delivery would be significantly disrupted or delayed due to certain circumstances, such as the level of design and engineering for a project that has occurred in relation to the effective date of the construction materials preference, and (3) specific information as to the construction materials which may not be available, as well as transportation projects, such as projects in various stages of FTA's Capital Investment Grants program, for which a waiver may be justified due to significant delay in project delivery. The Department did not receive any comments suggesting that the waiver should be applied to specific types of contracts beyond those in the proposal.

FINDING ON THE WAIVER

DOT recognizes the importance of ensuring the use of domestically produced construction materials on infrastructure projects receiving Federal assistance and the need to implement the requirement in a way that does not delay delivery of projects that were sufficiently advanced before applying the requirement to DOT funding. Therefore, based on all the information available to the Agency, DOT finds that it is in the public interest to issue a waiver of BABA's domestic preference for construction materials for:

- (1) Any contract entered into before November 10, 2022; and

- (2) Any contract entered into on or after November 10, 2022, and before March 10, 2023, if the contract results from a solicitation published prior to May 14, 2022.

This waiver applies only to: (i) DOT awards obligated on or after January 30, 2023; and (ii) for awards that are obligated on or after November 10, 2022, but prior January 30, 2023, expenditures for construction materials incurred on or after January 30, 2023. For contracts executed after May 14, 2022, the waiver does not apply to any construction materials that a contractor or subcontractor takes delivery of on or after October 1, 2024.

In these limited circumstances, DOT recipients incurred costs, executed contracts, and/or are conducting procurements with long lead times prior to the BABA construction materials requirement taking effect, though they will seek Federal reimbursement through grants obligated after the requirement became effective. This waiver will preserve the eligibility of costs a project sponsor already incurred or estimated before the construction materials requirement took effect. The purpose of covering contracts through March 10, 2023, for contracts resulting from solicitations published before the May 14, 2022, the BABA effective date, is to provide recipients with reasonable time to complete procurements. Project sponsors and offerors have invested significant resources in such procurements, which are based on design and engineering conducted before the BABA construction materials requirement went into effect. A project sponsor whose solicitation does not result in a contract before March 10, 2023, will have to take such measures as may be necessary to ensure that its contract will comply with the construction materials requirement.

In issuing this public interest waiver, DOT is not making a finding that any construction materials are not produced in the United States in sufficient and reasonably available quantities

or of a satisfactory quality. Such a finding would require a separate waiver action under section 70194(b)(2).

The waiver applies to infrastructure projects funded by financial assistance administered by the Office of Secretary of Transportation or any of DOT's Operating Administrations with financial assistance programs, including the Federal Aviation Administration (FAA); the Federal Highway Administration (FHWA); the Federal Motor Carrier Safety Administration; the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); the Maritime Administration (MARAD); the National Highway Traffic Administration (NHTSA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

This waiver does not affect any domestic preference requirements under other authorities, including DOT's non-BABA domestic preference statutes: 49 U.S.C. § 50101 (FAA); 23 U.S.C. § 313 (FHWA and NHTSA); 49 U.S.C. § 22905(a) (FRA); 49 U.S.C. § 5323(j) (FTA); and 46 U.S.C. § 54101(d)(2) (MARAD).

The Implementation Guidance also provides that, before granting a waiver in the public interest, to the extent permitted by law, agencies shall assess whether a significant portion of any cost advantage of a foreign-sourced product is "the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products." Implementation Guidance at p. 12. [E.O. 14005](#) at Section 5 includes a similar requirement for "steel, iron, or manufactured goods." However, because the public interest waiver that DOT is proposing in this notice is not based on consideration of the cost advantage of any foreign-sourced steel, iron, or manufactured product content, there is not a specific cost advantage for DOT to consider.

Issued in Washington, DC on: January 30, 2023.

Polly E. Trottenberg,

Deputy Secretary.

EXHIBIT 23 – BUILD AMERICA BUY AMERICA ACT (BABA) – STORED SPECIFICATIONS

*** USE ON ALL FEDERAL AID PROJECTS ***

(106CMATLS, 10/20/22)

SECTION 106 CONTROL OF MATERIALS: of the Standard Specifications is modified to add:

106.17 Construction Materials:

A construction material, when used on a federal-aid construction project shall comply with the requirements of Build America, Buy America (BABA) Act specified in Title IX, Subtitle A, Part 1, Sections 70901 and 70911-70918 (Pub. L. No. 117-58 §§ 70901; §§ 70911-70918) of the Infrastructure Investment and Job Act (IIJA).

A "construction material" that is permanently incorporated on the project shall include an article, material, or supply that is or consists primarily of the following:

1. Non-ferrous metals;
2. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
3. Glass (including optic glass);
4. Lumber; or
5. Drywall.

Items manufactured through a combination of either two or more materials listed above, or at least one of the materials listed above and a material not listed shall be considered as a manufactured product, rather than as a construction material.

Build America, Buy America provisions specified for manufactured products in Section 70912(6)(B) of the IIJA, do not apply to federal-aid construction projects per FHWA's existing statutory requirement applicable to manufactured products. A "manufactured product" is considered to be an item that undergoes one or more manufacturing processes before the item can be used on a federal-aid construction project.

Construction materials shall not include cement and cementitious materials; bituminous materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

All construction materials shall be produced in the United States. This means, all manufacturing processes to produce the construction materials shall occur in the United States. All manufacturing processes for construction materials shall mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.

The contractor shall furnish the Engineer with Certificates of Compliance, conforming to the requirements of Subsection 106.05 of the specifications, which shall state that the construction materials incorporated in the project meet the requirements specified herein.

106CMATLS - 1/2

Certificates of Compliance shall also certify that all manufacturing processes to produce construction materials occurred in the United States.

Convict-produced materials are prohibited in accordance with the requirements of 23 CFR 635.417.

108CMATLS - 2/2

EXHIBIT 24 – ADOT DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION OF FINAL PAYMENT CONSTRUCTION



Clear Form

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION OF FINAL DBE PAYMENTS CONSTRUCTION

(Submit form for each DBE working on the contract)

The undersigned Contractor on Agency Project No.: _____ ADOT TRACS No.: _____
hereby, certifies that full payment was made, to the firm indicated for material and/or work performed
under this project's contract as follows:

DBE Firm AZ UTRACS Registration No.: _____

Name of DBE Firm _____ was paid the amount of _____

This certificate is made under Federal and State Laws concerning false statement. Supporting
documentation for this payment is subject to audit and should be retained for a minimum of three years
from project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted
by the contractor, all documentation supporting the contractor's position should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR
FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE
BEST OF MY KNOWLEDGE.

Contractor Company Name: _____

Check One: ☐ Contractor ☐ Subcontractor

Name: _____ Title: _____

Signature: _____ Date: _____

The undersigned contractor/subcontractor/supplier/manufacture for the above named project hereby
certified that payments were received and/or justification by the contractor is correct.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR
FEDERAL LAWS, THAT THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE
BEST OF MY KNOWLEDGE.

DBE Firm Name: _____

Check One: ☐ Contractor ☐ Subcontractor/Supplier/Manufacture
☐ Lower-tier: Subcontractor/Supplier/Manufacture

Name: _____ Title: _____

Signature: _____ Date: _____

BECO Form: 3110C (Rev 6/11/2025)

The following files can be found in the “Documents” section of BidNet Direct under this solicitation:

260059-Geotech Report

260059-ROW Clearance

260059-Cross Section

260059-Earthwork Report

260059-Utility Clearance

260059-Special Provisions

260059-Plan Set