ADDENDUM NO. 1

to

SPECIFICATIONS, CONTRACT DOCUMENTS AND DRAWINGS

for

San Jose Boulevard Road Improvements
Phase IV
CN: 2101760
Bid No. 2016-30

City of Carlsbad, New Mexico

September 2016

Bid Submittal Date: September 28, 2016
2:00 PM

Owner:

City of Carlsbad
101 N. Halagueno Street
Carlsbad, New Mexico 88220

Engineer

Souder, Miller & Associates
500 North Main St. Suite 504
Roswell, NM 88201
(575) 624-2400

Addendum No. 1 is issued to provide changes and/or clarifications to the above referenced project bid. This addendum constitutes a change to the aforementioned contract documents. All provisions of the contract documents not in conflict with Addendum No. 1 shall remain in full force. Receipt of this Addendum shall be acknowledged on the Bid Form.

9-12-2016

David M. Storey, PE NM # 10850
Project Engineer
Souder, Miller & Associates

The following are statements of general information for plan holders.

CLARIFICATIONS TO BID DOCUMENTS

ITEMS ADDED TO CONTRACT DOCUMENTS:
Notice to Contractors – Gross Receipts Tax – one page
Notice to Contractors – Pavement Smoothness Measurement – one page
NMDOT Special Provision Index – two pages

UPDATED ITEMS TO BE REPLACED IN CONTRACT DOCUMENT
Notice to Contractors – Cooperation with Utilities (Updated July 5, 2016)
Notice to Contractors – Federal Requirements – thirty-eight pages (to replace existing Notice to Contractors – Civil Rights Obligations – forty-five pages)
Notice to Contractors – Return of Lobbying Disclosure – three pages (to replace existing Notice to Contractors – Notice to Contractors – Return of Lobbying Disclosures – three pages)

Last Day for Questions:
SMA will respond to questions up until September 21, 2016 11:00 AM. After that time, no more questions will be received.

NOTICE TO CONTRACTORS

Gross Receipts Tax

The New Mexico Procurement Code, NMSA 1978, § 13-1-108 (1984) requires the New Mexico Department of Transportation ("NMDOT") to exclude the applicable state gross receipts tax, or applicable local option tax, from Bids received for this Project. The NMDOT will pay the applicable tax including any increase in the applicable tax effective after the Contract is executed by the NMDOT. The applicable gross receipts tax or applicable local option tax will be shown as a separate amount on each Progress Payment.

Chief Engineer
July 5, 2015

NOTICE TO CONTRACTOR

Pavement Smoothness Measurement

CN 2101760

In accordance with the 2014 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction, Section 401 – Pavement Smoothness Measurement, this Project shall utilize Category III for pavement smoothness measurement.

NMDOT

CN 2101760

The 2014 Edition of the New Mexico Department of Transportation Standard Specifications for Highway and Bridge Construction (Standard Specifications) shall govern construction of this Project unless otherwise noted.

The following Special Provisions shall supplement the above Standard Specifications.

SPECIAL PROVISION	PAGE
Modifying Sections - 303 - Base Course, 403 - Open Graded Friction Course (Non-QLA) 412 - Hot In-Place Recycling Of Asphalt Pavement, 413 - Single-Machine Hot In-Place Surface Repaving, 415 - Pavement Surface Restoration, 416 - Minor Paving, 417 - Miscellaneous Paving, 451 - Portland Cement Concrete Pavement, 517 - Precast Concrete Structures, 518 - Pre-Stressed Concrete Members (2/12/14)	1-2
Modifying Sections 203 - Excavation, Borrow, and Embankment, 405 - Detour Pavements, 408 - Prime Coat, 605 - Drains, 608 - Sidewalks, Drive Pads and Concrete Median Pavement, 609 - Curb and Gutter (2/24/14)	3
Modifying Section 201 - Clearing and Grubbing (2/12/14)	4
Modifying Section 206 - Excavation and Backfill for Culverts & Minor Structures (5/16/14)	5
Modifying Section 210 - Excavation and Backfill for Major Structures (1/29/15)	6-7
Modifying Section 401 - Pavement Smoothness Measurement (1/27/14)	8
Modifying Section 402 - Asphalt Materials, Hydrated Lime, and Anhydrite Based Material (2/22/16)	9
Modifying Section 403 - Open Graded Friction Course (Non-QLA) (4/7/14)	10-11
Modifying Section 405 - Detour Pavements (2/13/14)	12
Modifying Section 408 - Prime Coat (2/22/16)	13
Modifying Section 423 - Hot Mix Asphalt Superpave (QLA and Non QLA) (4/8/16)	14-16
Modifying Section 424 - Warm Mix Asphalt (4/8/16)	17-20
Modifying Section 450 - Portland Cement Concrete Pavement (PCCP) (QLA) (7/6/15)	21-24
Modifying Section 451 - Portland Cement Concrete Pavement (PCCP) (Non-QLA) (4/16/14)	25
Modifying Section 452 - Sealing and Resealing Concrete Pavement Joints (1/27/15)	26
Modifying Section 455 - Diamond Grinding and Diamond Grooving of Portland Cement Concrete Pavement (1/30/15)	27
Modifying Section 504 - Load Testing of Bearing Piles (3/28/16)	28-37
Modifying Section 511 - Concrete Structures (3/25/16)	38
Modifying Section 512 - Superstructure Concrete (2/2/15)	39
Modifying Section 532 - Penetrating Water Repellent Treatment (3/4/15)	40

Special Provisions
CN 2101760

Modifying Section 536 - Polymer Concrete Bridge Deck Overlay (3/25/16)	41
Modifying Section 544 - Protective Coating of New Structural Steel (3/31/16)	42-51
Modifying Section 545 - Protective Coating of Miscellaneous Structural Steel (3/31/16)	52-64
Modifying Section 546 - Recoating Structures (5/23/16)	65-76
Modifying Section 548 - Coating of Concrete (3/25/16)	77-82
Modifying Section 606 - Metal And Concrete Wall Barrier (10/30/14)	83-96
Modifying Section 607 - Fence (7/6/15)	97
Modifying Section 610 - Cattle Guards (7/6/15)	98
Modifying Section 622 - Field Laboratories and Field Offices (7/6/15)	99
Modifying Section 631 - Rumble Strips (7/6/15)	100
Modifying Section 632 - Revegetation (3/3/14)	101
Modifying Section 702 - Construction Traffic Control Devices (4/4/16)	102
Modifying Section 705 - General Requirements For Traffic Signal and Lighting Systems (4/4/14)	103
Modifying Section 802 - Post Construction Plans (1/30/09)	104
Modifying Section 901 - Quality Control/Quality Assurance (QC/QA) (1/29/15)	105-108

ROW
July 5, 2016

Notice to Contractors

Cooperation with Utilities

CN 2101760

For construction purposes this Notice to Contractors ("NTC") does not supersede or alter the obligations in the 2014 Edition of the New Mexico Department of Transportation ("NMDOT") Standard Specifications for Highway and Bridge Construction, ("Standard Specifications") Section 105.6 – "Cooperation with Utilities". This Project's Work affects utilities. The NMDOT may or may not own the utilities that are within the Project limits. Therefore the Contractor shall coordinate with both the NMDOT and the respective utility identified in this NTC. Failure by the Contractor to comply with this NTC and the Contract may result in delays to the Project and may result in Non-Conformances. This coordination and associated Work shall be considered incidental to the completion of the Project and no separate measurement or payment will be made.

The Contractor shall preserve line location markings or provide an offset mark before obliterating a locate mark. Restrictions exist regarding the use of emergency line locates. An emergency is defined as an excavation that must be performed due to circumstances beyond the control of the Contractor and that affects public health, safety or welfare. Emergency locate request shall not be used to circumvent poor job planning or economic consequences.

NMDOT Owned Facility Infrastructure

If a Contractor's or Subcontractor's activities at any tier, destroys, obliterates, covers or in any way alters utility markings put in place by the NMDOT, the Contractor shall ensure that those line markings are reestablished or provide offset markings before the Contractor or its Subcontractor at any tier begins Work in the affected area. The Contractor shall both photo document the utility markings in their construction area prior to disturbing those markings and photo document the remarked utility alignment or the offset markings to ensure accuracy to the original markings. Photos will clearly identify distances and/or recognizable features needed to ensure re-markings or offset markings are accurate.

If the Contractor or Subcontractor at any tier fails to accurately reestablish previously placed line markings and damage occurs to any NMDOT owned facility infrastructure the Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs. If any NMDOT owned facility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the NMDOT. NMDOT incurred costs related to damage to NMDOT owned facility infrastructure may be recovered from the Contractor by Progress Payment offset or the Contractor's Project performance bond. All damaged infrastructure will be repaired as an emergency repair (within 24-hours), and shall be performed in accordance with the Standard Specifications.

Non-NMDOT Owned Utility Infrastructure

Utilities shown on the Plans, which will not be relocated, shall require the Contractor to take the necessary precautions to protect the utility from damage caused by the Work. If any such utility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the utility owner. The Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs.

Utility Relocation

Utilities detailed below, shall require the Contractor to take the necessary precautions to protect the utility from damage caused by the Work. If any such utility is damaged, the Contractor shall bear the cost of repair to the satisfaction of the utility owner. The Contractor shall be responsible for all associated repair costs and no additional Contract Time will be granted for repairs.

All timeframes listed below are reflected in Days. Per Standard Specification Section 108.3 "Schedule" the Contractor shall include the timeframes listed below as an activity in the CPM Baseline Schedule or Bar Graph Baseline Schedule, as called for in the Contract, and all schedule updates so that the NMDOT can readily identify the Work and measure the progress of the same.

CCRB
July 5, 2016

NOTICE TO CONTRACTORS

Federal Requirements

I. TITLE VI
II. DISADVANTAGED BUSINESS ENTERPRISE (DBE)
III. SUBCONTRACTOR PROMPT PAYMENT PROVISIONS
IV. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS AND SUPPLEMENTS
V. SUPPLEMENTAL EEO REQUIREMENTS
VI. INDIAN PREFERENCE
VII. NMDOT ON THE JOB TRAINING/SUPPORTIVE SERVICES ("OJT/SS") PROGRAM
VIII. WAGE RATES
IX. LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS
X. TITLE VI ASSURANCES APPENDIX A AND APPENDIX E

References made to the New Mexico Department of Transportation ("NMDOT") web page can be accessed through the following link: http://dot.state.nm.us/en.html.

I. TITLE VI

The text United States Department of Transportation (USDOT) Order No. 1050.2A has been excerpted for this section with minimal modification by the NMDOT.

The Contractor (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 the NMDOT, 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 Nondiscrimination 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 assurance 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 NMDOT.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Nondiscrimination 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 nondiscrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

"The NMDOT, 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 insure 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".

The NMDOT's Title VI Assurances, Appendices A and E are included in Section X at the end of this Notice to Contractors ("NTC").

For further information, contact the Title VI coordinator for the NMDOT through the following link: http://dot.state.nm.us/en/OEOP.html#f.

II. DISADVANTAGED BUSINESS ENTERPRISE ("DBE")

Per 49 C.F.R. § 26.13(b) (2014), the Contract NMDOT signs with the Contractor (and each Subcontract the Contractor signs with a Subcontractor) must include the following assurance:

"The contractor, sub recipient 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 of monthly progress payments;
(2) assessing sanctions;
(3) liquidated damages; and/or
(4) disqualifying the contractor from future bidding as non-responsible."

For the purposes of the assurance, DOT-assisted Contracts means Contracts that receive federal funding and recipient means the NMDOT.

Terms and Definitions

Terms and Definitions contained in 49 C.F.R. § 26.5 are incorporated in this NTC by reference. Terms and definitions in the same control over terms that conflict with the terms and definitions in the 2014 Edition of the NMDOT Standard Specifications for Highway and Bridge Construction ("Standard Specifications") Section – 101.4 "Terms and Definitions".

Pre-Award Procedures

Projects that have DBE goals established in the Advertisement are subject to race-conscious measures. When a DBE goal is established the following DBE form and NTC, or evidence of the Bidder's good faith efforts, are required in order for the Bid to be considered responsive:

1. Disadvantaged Business Enterprise Goal Form A-585 ("A-585"); and

2. NTC Disadvantaged Business Enterprise (DBE) Bidder's Commitment and DBE's Confirmation Form A-644 ("A-644").

In the event the Bidder is also a certified DBE Contractor, and intends to self-perform a portion of the Work, the Bidder shall list itself and any other DBE it will use on Form A-585. Failure to comply with this requirement shall render the Bid non-responsive.

Pre-Award Bidder's Good Faith Efforts

When a Project has an established DBE goal, a Bidder may meet the requirements even if it doesn't meet the goal through documenting adequate good faith efforts. This means that the Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The documentation of good faith efforts shall include, but is not limited to, copies of each DBE and non–DBE quote submitted to the Bidder when a non–DBE was selected over a DBE for Work on the Contract.

Per 49 C.F.R. § 26.53 (b)(3) (2014) and 49 C.F.R. § 26 Appendix A the NMDOT has the responsibility to make a fair and reasonable judgment as to whether a Bidder, that did not meet the goal, made adequate good faith efforts.

The below contains a list of types of actions, which the NMDOT may consider as part of the Bidder's good faith efforts to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive, as other factors or types of efforts may be relevant in appropriate cases. The following is a list of the type of actions, and documentation, which the NMDOT will consider as part of the Bidder's good faith efforts to obtain DBE participation:

1) The Bidder's copies of each DBE and non-DBE subcontractor quote submitted to the Bidder when a non-DBE subcontractor was selected over a DBE for Work on the Contract to review whether DBE prices were substantially high; and the NMDOT may contact the DBEs listed on a the Bidder's List of Quoters submitted by the Bidder to inquire whether DBE primes were contacted by the Bidder. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under this NTC or rule;
2) The Bidder's solicitation of the interest of DBEs as early in the acquisition process as possible and as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the Subcontract. The Bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations;
3) The Bidder's selection of portions of the Work to be performed by the DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract Work items into economically feasible units to facilitate DBE participation even when the Bidder might otherwise prefer to perform these Work items with its own forces;
4) The Bidder's negotiations in good faith with interested DBEs. It is the Bidder's responsibility to make a portion of the Work available to DBE subcontractors, sub-consultants and Suppliers and to select those portions of the Work or material needs consistent with the available DBE subcontractors, sub-consultants and Suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses and telephone numbers of DBEs that were considered, a description of the information provided regarding the construction plans and

specifications for the Work selected for subcontracting or requirements of Work, and evidence as to why additional agreements could not be reached for DBEs to perform the Work; and,

5) The Bidder's rejection of DBEs as being unqualified. The Bidder shall not reject a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non- solicitation of Bids in the Bidder's efforts to meet the Project goal. Another practice considered insufficient good faith effort is the rejection of the DBE because its' quotations for Work were not the lowest received. However, nothing in this paragraph will be considered to require the Bidder to accept unreasonable quotes to satisfy the Contract goal.

If the NMDOT determines that the Bidder has failed to make adequate good faith efforts to meet the DBE goal requirements, the NMDOT shall reject the Bid as non-responsive. The Bidder may dispute this determination and rejection of the Bid through the procedures in Standard Specification Section - 103.3 "Bidding Dispute Resolution Procedures".

Post-Award

Counting DBE Participation Toward Goals

This section in no way alters the obligations in Standard Specification Section - 108.1 "Subcontracting" and is only used to determine DBE participation levels for each Bidder. The Contractor must still comply with Standard Specification Section - 108.1 and perform with its own organization at least 40% of the Work based on the Total Bid Amount.

Only the value of the Work actually performed by the DBE will be counted towards DBE Project goals. DBE participation shall be credited as follows:

1. Count the entire amount of that portion of the Contract Work that is performed by the DBE's own forces. Include the cost of supplies and Materials obtained by the DBE for the Work including supplies purchased or equipment leased by the DBE. Supplies and equipment purchased or leased by a DBE from a prime contractor shall not be counted toward the DBE Project goal.

2. Count the entire amount of fees or commissions charged by a DBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required of the performance of the Contract, toward DBE goals, provided NMDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3. When a DBE subcontracts part of its Work to another firm, the value of the subcontracted Work may be counted toward DBE goals only if the DBE's Subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE does not count toward DBE goals.

When a DBE performs as a participant in a joint venture, count the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with own forces toward DBE goals.

The NMDOT counts expenditures to a DBE toward DBE goals only if the DBE is performing a commercially useful function ("CUF") on the Contract.

1. A DBE performs a CUF when it is responsible for execution of the Work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. To perform a CUF, the DBE must also be responsible, with respect to Materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the Material and installing (where applicable) and paying for the Material itself.

2. A DBE does not perform a CUF 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.

3. If a DBE Contractor, Subcontractor, at any tier, or Supplier does not perform or exercise responsibility for at least 30% of the total cost of its Contract with its own forces, or the DBE subcontracts a greater portion of the Work of a Contract than would be expected on the basis of normal industry practice for the type of Work involved, it will be presumed that the DBE is not performing a CUF.

4. When a DBE is presumed not to be performing a CUF as provided in paragraph 3 of this section, the DBE may present evidence to rebut this presumption.

5. Decisions concerning CUF matters are not administratively appealable to USDOT.

<u>DBE Trucking</u>

Per the Standard Specification Section 108.1 "Subcontracting"..."A Trucker is not a Subcontractor unless the Contractor is using the Trucker to meet the DBE requirement associated with the Project". The following factors shall be used to determine whether DBE trucking Subcontractors are performing a CUF:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.

3. The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.

4. The DBE may lease trucks from another DBE, 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 lessee DBE provides on the Contract.

5. The DBE may also lease trucks from a non-DBE, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped 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 equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

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

7. For purposes of this DBE trucking 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.

DBE Supplying Materials

1. If the Materials or supplies are obtained from a DBE manufacturer, count 100 % of the cost of the Materials or supplies toward the DBE goal. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises the Materials, supplies, articles, or Equipment required under the Contract.

2. If the Materials or supplies are purchased from a DBE regular dealer, count 60 % of the cost of the Materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the Materials, supplies, articles or Equipment required under the Contract are bought, kept in stock and regularly sold or leased to the public in the usual course of business. The DBE regular dealer, 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.

   A DBE may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as required in paragraph 1 of this section if the DBE both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on ad hoc or contract-by-contract basis.

   Packagers, brokers, manufacturers' representatives, or other person who arrange or expedite transactions are not regular dealers for the purpose of paragraph 2 of this section.

3. With respect to Materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees and commissions charged for assistance in the procurement of the Materials and supplies, or fees or transportation charges for the delivery of Materials and supplies required on a job site, toward DBE goals, provided the NMDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the Materials or supplies themselves is not creditable toward DBE goals.

Credit for Work performed shall not be counted toward the DBE project goal until the amount committed has been paid to the DBE.

Pre-Award Substitution/Replacement and Post-Award Termination of DBE for Projects Having a DBE Goal

The Contractor shall use the DBE listed on the A-585 and confirmed on the A-644 to perform the specific Work identified. The Contractor shall not substitute, replace or terminate a DBE listed on the A-585 and confirmed on the A-644 (or an approved substitute DBE) without the prior written consent of NMDOT. The NMDOT considers it an improper DBE substitution, replacement or termination when a Contractor performs Work originally designated for a DBE with its own forces or those of an affiliate, or with a non-DBE, or with a substitute DBE. Unless NMDOT consent is provided, the Contractor shall not be entitled to any payment for Work or Materials unless it is performed by the listed DBE.

NMDOT will provide written consent to the termination request only if NMDOT agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate the DBE. For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE fails or refuses to execute a written Contract;

2. The listed DBE fails or refuses to perform the Work consistent with normal industry standards, provided, however, that good cause does not exist if the failure or refusal to perform results from the bad faith or discriminatory action of the Contractor;

3. The listed DBE fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;

4. The listed DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;

5. The listed DBE is ineligible to Work on public works projects because of suspension or debarment proceedings pursuant to 26 CFR Parts 180, 215 or 1200 or applicable state law;

6. The listed DBE is not a responsible Contractor;

7. The listed DBE voluntarily withdraws from the Project and provides to NMDOT written notice of its withdrawal;

8. The listed DBE is ineligible to receive DBE goal credit for the type of Work required;

9. A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its Work on the Project; or

10. Other documented good cause that NMDOT determines compels the termination of the DBE. Provided that good cause does not exist if the Contractor seeks to terminate a DBE it relied on to obtain the Contract so that the Contractor can self-perform the Work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE after Contract Award.

Before seeking concurrence from the NMDOT to substitute, replace or terminate a DBE (or an approved substitute DBE) the Contractor must provide the DBE written notice including the reason of its intent to substitute, replace or terminate and give the DBE 5 Days to respond to the Contractor's notice. If required in a particular case as a matter of public necessity the NMDOT may allow a response period shorter than 5 Days. The DBE in response to the notice may provide the Contractor and NMDOT with the reasons, if any, why it objects to the proposed substitution, replacement or termination and why NMDOT should not approve the Contractor's request.

After receipt and review of the DBE response the NMDOT will provide a written response to the Contractor's request. NMDOT's decision is not appealable to USDOT.

After an approved termination of a DBE the Contractor shall make good faith efforts to subcontract with a substitute DBE which can perform the same type of work on the Project as the substituted, replaced or terminated DBE or to subcontract with a replacement DBE which can perform other types of work remaining on the Project. The good faith efforts shall be documented by the Contractor. The NMDOT may request a copy of the documented good faith efforts and the Contractor shall submit the same in 7 Days, which may be extended to an additional 7 Days at the request of the Contractor. The NMDOT will provide a written determination stating whether or not good faith efforts have been demonstrated. The Contractor may refer to Appendix A of 49 C.F.R. § 26 for guidance on good faith efforts.

NMDOT may allow a DBE contract goal waiver, adjust the DBE goal, or assess construction contract liquidated damages or design contract liquidated damages as may be appropriate, depending on the individual project's overall circumstances. NMDOT's decision to waive or adjust the contract goal is not appealable to USDOT.

Record Keeping Requirements

The Contractor shall keep such records as necessary to ensure compliance with its DBE utilization obligations, in accordance with Standard Specification Section - 107.28 "Contractor Records".

Compliance Procedures

The Contractor is solely responsible and obligated to ensure DBE compliance at all tiers until the final payment is made in accordance with Standard Specification Section - 109.10 "Project Closure".

If it is found that the Contractor or Subcontractor at any tier is not in compliance with this NTC and DBE program, NMDOT will notify the non-compliant party in writing. Failure to be compliant is a material breach of the Contract and may result including, but not limited to, the NMDOT exercising the remedies below. The NMDOT may conduct a compliance conference with the non-compliant party or parties to discuss the area(s) of non-compliance. In the event that the non-compliant party or parties fails or refuses to perform in compliance the NMDOT will send the non-compliant party or parties a "Notice of Non-Compliance" containing a deadline for the compliance. If the non-compliant party becomes compliant after the "Notice of Non-Compliance" the NMDOT will rescind the "Notice of Non-Compliance" and notify the party or parties. If the deficiencies are not corrected, NMDOT will initiate administrative action against the non-compliant party or parties, which may include but not be limited to:

1. Termination of the Contract;

2. Withholding of monthly progress payments;

3. Initiation of appropriate suspension or debarment proceedings;

4. Referral of any unlawful actions to the appropriate enforcement agencies; or

5. Other actions as appropriate, at the discretion of NMDOT.

III. SUBCONTRACTOR PROMPT PAYMENT PROVISIONS

This NTC does not alter the sole discretion of the NMDOT to make good cause determinations concerning Contractor prompt payment matters.

To ensure that all obligations to promptly pay Subcontractors are met Contractors shall pay all Subcontractors, Suppliers and Fabricators their respective Subcontract amount by electronic transfer, if available, for NMDOT undisputed Accepted Work within the timeframes specified in the Standard Specification Section 108.1 - "Subcontracting".

The Contractor is solely responsible and obligated to ensure prompt payment obligations and compliance reporting through all tiers until the final payment is made in accordance with Standard Specification Section 109.10 - "Project Closure". Contractors, Subcontractors or Suppliers, at all tiers, shall be required to submit payment information, as provided for in the B2GNow supporting software system, indicating when payments are made to any Subcontractor, Supplier and or Fabricator, regardless of DBE status. The Subcontractor, Supplier or Fabricator shall in B2GNow timely select whether payment was or was not received for the undisputed and Accepted Work. The NMDOT may recognize supporting documentation of such payment(s) in one or more of the following forms:

1. Proof of the timely deposit of funds into the Subcontractor, Supplier and or Fabricator bank account;

2. Proof of timely hand delivery of payment to the Subcontractor, Supplier and or Fabricator; or

3. Proof of timely mailing payment to the Subcontractor, Supplier and or Fabricator.

The Contractor shall notify the NMDOT in all situations when it will not make full prompt payment to its Subcontractor, Supplier or Fabricator before the payment becomes due. The Contractor shall also notify the Subcontractor, Supplier or Fabricator in all situations when it will not make full prompt payment before the payment becomes due. A Contractor will be required to fully document any alleged disputes with its Subcontractors, Suppliers and or Fabricators and provide the documentation to the NMDOT upon request.

The Contractor shall have good cause for any failure to fully or partially provide prompt payment for Accepted Work. The NMDOT determines good cause. Good cause recognized by the NMDOT to excuse a failure to promptly pay includes, but is not limited to, a claim concerning the Subcontractor's or Supplier's Work, failure to provide certified payrolls, and other required Project documentation. The amount withheld cannot exceed the amount in dispute between the Contractor and Subcontractor or Supplier. The

Contractor has the burden to support the Contractor's assertion of good cause. If the failure to fully or partially provide prompt payment is based on a claim, the Contractor shall submit a verifiable explanation and/or proof of the claim between the parties to the Project Manager.

Retainage

The NMDOT will require Contractors to pay all retainage owed to the Subcontractor, Supplier or Fabricator within 30 Days of the Progress Payment indicating Acceptance of the completed Subcontract Work, even if the NMDOT continues to withhold retainage from the Contractor. The Subcontract Work is completed when all the tasks called for in the Subcontract have been accomplished, documented and Accepted by the NMDOT. The Contractor may request partial acceptance in accordance with Standard Specifications Section - 105.18.1 "Partial Acceptance" upon satisfactory completion of the Subcontract Work. Good cause recognized by the NMDOT to excuse a failure to promptly release retainage includes, but is not limited to, a claim concerning the Subcontractor's or Supplier's Work, failure to provide certified payrolls, and other required Project documentation. The amount withheld cannot exceed the amount in dispute between the Contractor and Subcontractor or Supplier. The Contractor has the burden to support the Contractor's assertion of good cause for the failure to promptly release retainage. If the failure to promptly release retainage is based on a claim, the Contractor shall submit verifiable explanation and/or proof of the claim between the parties to the Project Manager.

Cross-Project Offsets

The NMDOT will not recognize cross-Project offsets as "good cause" excusing untimely payment for Accepted Work. The Contractor's Contract with Subcontractors or Suppliers shall not contain any provision that allows the Contractor to withhold payment from the Subcontractor or Supplier as a result of the Subcontractor's or Supplier's performance on separate Contract(s). Any such provision will be without effect, and shall not be recognized as good cause excusing a failure to make prompt payment.

IV. REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS AND SUPPLEMENTS

FHWA-1273 -- Revised May 1, 2012

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. Compliance with Government-wide Suspension and Debarment Requirements

XI. Certification Regarding Use of Contract Funds for Lobbying

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (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).

   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.

   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). 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 bid proposal or request for proposal 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).

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.

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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, 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 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 35 and 29 CFR 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.

    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, 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 who 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.

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, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure 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. 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, 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, 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 there under. 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, 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 and 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. Assurance Required by 49 CFR 26.13(b):

   a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor 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 contracting agency deems appropriate.

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 $10,000 or more.

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, 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

   a. All laborers and mechanics employed or working upon the site of the work, 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 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.

      Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall 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.

      (1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. 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.

(3) 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 shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall 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.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. 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, 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.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, 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.

3. Payrolls and basic records

   a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

   b.

      (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of

Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed 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 Regulations, 29 CFR part 3;

(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 of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed 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 Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall 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 the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall 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, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

d. 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. 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.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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.

9. Disputes concerning labor standards. 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 he or she) 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 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

    b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

    c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 watchmen 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.

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. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 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.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or 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, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

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" 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:

      (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.

2. 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. 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.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

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 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.

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 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).

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 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 1, 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

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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.

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.

   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.

   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.

   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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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. 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) 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;

      (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; 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.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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)

a. By signing and submitting this proposal, the prospective lower tier 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.

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 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 grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions 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.

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 20).

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.

V. SUPPLEMENTAL EEO REQUIREMENTS

Incorporated in this Contract, by reference, are supplemental requirements to the Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") Equal Employment Opportunity Program ("EEO"). The supplemental requirements are:

1. Exec. Order No. 11246, 30 FR 12319 (September 24, 1965);
2. 41 C.F.R. § 60-4.1 through 60-4.9 (2015);
3. Exec. Order No. 13665 Non-Retaliation for Disclosure of Compensation Information (April 8, 2014); and
4. Further Amendments to Exec. Order No. 11478, Equal Employment Opportunity in the Federal Government and Exec. Order No. 11246, Equal Employment Opportunity (July 21, 2014).

Per 41 C.F.R. § 60-4.2 all federally-assisted Contracts shall include (information has been interlineated applicable to this Contract as required):

"(a) All Federal contracting officers and all applicants shall include the notice set forth in paragraph (d) of this section and the Standard Federal Equal Employment Opportunity Construction Contract Specifications set forth in § 60–4.3 of this part in all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts to be performed in geographical areas designated by the Director pursuant to § 60–4.6 of the part. Administering agencies shall require the inclusion of the notice set forth in paragraph (d) of this section and the specifications set forth in § 60–4.3 of this part as a condition of any grant, contract, subcontract, loan, insurance or guarantee involving federally assisted construction covered by this part 60–4.

(b) All non-construction contractors covered by Executive Order 11246 and the implementing regulations shall include the notice in paragraph (d) of this section in all construction agreements which are necessary in whole or in part to the performance of the covered non-construction contract.

(c) Contracting officers, applicants and non-construction contractors shall give written notice to the Director within 10 working days of award of a contract subject to these provisions. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract, estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed.

(d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to § 60–4.6 of this part (see 41 CFR 60–4.2(a)):

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or 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 workforce in each trade on all construction work in the covered area, are as follows:

The most current participation goals for minorities and females can be found at http://www.dol.gov/ofccp/TAguides/TAC_FedContractors_JRF_QA_508c.pdf and are:

New Mexico:

160 Albuquerque, NM:
SMSA Counties.
0200 Albuquerque, NM-38.3%
NM Bernalillo; NM Sandoval.
Non-SMSA Counties-45.9%
NM Catron. NM Colfax; NM De Baca; NM Guadalupe; NM San Juan; NM San Miguel; NM Santa Fe; NM Socorro; NM Taos; NM Torrance; NM Valencia.

Goals for females:
Nationwide goal-6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

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.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

The most current OFFCP staffing can be found at http://www.dol.gov/ofccp/contacts/regkeyp.htm and are:

SOUTHWEST and ROCKY MOUNTAIN REGION

Covered States/Territories: Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, Wyoming

Regional Director: Melissa L. Speer

Deputy Regional Director: Aida Collins

Regional Outreach Coordinator: E. Michelle Hernandez

Contact Information:
U.S. Department of Labor for OFCCP
Federal Building, Room 840
525 South Griffin St.
Dallas, TX 75202
(972) 850-2550
(972) 850-2552 (Fax)
(877) 889-5627 (TTY-National Office)
Pre-Award Email Address: OFCCP-SW-PreAward@dol.gov
For Complaints: OFCCP-SW-CC4@dol.gov

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is in the Advertisement."

VI. INDIAN PREFERENCE

This Contract preference requirement is an expansion of the provisions of the equal employment opportunity responsibilities for Contractors contained elsewhere in this NTC and the provisions contained under FHWA-1273.

If the Project is located on or near a reservation the Contractor, or its Subcontractor at any tier, may be required to extend a publically announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The word "near" includes all areas where a person seeking employment could reasonably expected to commute in the course of a work day. Contractors or Subcontractors, at any tier, shall not discriminate among Indians on the basis of religion, sex, tribal affiliation, and the use of such a preference shall not excuse compliance with the remaining EEO provisions of this NTC.

If the Contractor extends an Indian preference, then this NTC requires that Contractors shall afford preference to initial hiring, reassignment, transfer, competitive promotion, reappointment, reinstatement, or any personnel action to fill a vacant position to qualified and enrolled members of federally recognized Indian tribe. The extended preference shall extend to Indians and not extend to a specific tribe or tribal affiliation. There may be tribal laws and regulations that the Contractor is required to follow if an Indian preference is extended. Contractors shall make themselves aware of any labor requirements, taxes, fees, licenses, permits or conditions that may be imposed by the affected tribes for the Project work performed in the area. In order to be apprised of the tribal law or regulation requirements, the Contractor shall establish a liaison with local tribe employment offices and provide this individual's name and contact information to the Project Manager at the Pre-Construction Conference per Standard Specification Section 108.2 "Notice to Proceed and Pre-Construction Conference". The tribe's employment office may then assist the Contractor in in identifying qualified and tribally enrolled individuals and assist in guidance related to applicable tribal laws or regulations. Verification of available, qualified and enrolled individuals will be provided to the Contractor by the tribe's employment office. A list of contacts to facilitate the Contractor's coordination with the tribal liaison is at:

http://dot.state.nm.us/content/dam/nmdot/planning/Tribal_Contact_Listing.pdf

VII. NMDOT ON THE JOB TRAINING/SUPPORTIVE SERVICES ("OJT/SS") PROGRAM

The primary objective of the Special Provisions referenced in the below-link is to address the underrepresentation of minority and female workers in the construction trades through the assignment of OJT goals. To that end, the primary objective of the OJT program is the training and upgrading of minorities and females to journeyman status on NMDOT state lead, federal-aid contracts. Accordingly, the Contractor shall make every effort to enroll minority, women and economically disadvantaged persons to the extent that such persons are available within a reasonable area of recruitment. This training commitment is not intended, and will not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.

If Federal-aid funding is available and the NMDOT elects that the Project will be subject to the OJT/SS requirements then the Contractor or Subcontractor, at any tier, shall comply with the procedures outlined in Appendix B to Subpart A of 230 C.F.R. § 230. The OJT/SS program implemented by the Contractor or Subcontractor, at any tier, must be formally approved by the NMDOT before use of the program. In lieu of the use of a formally approved OJT/SS program the Contractor, or Subcontractor at any tier, may submit its own individual OJT/SS program for NMDOT consideration and approval. Until formal approval is received from the NMDOT CCRB through ACNM the individual Contractor or Subcontractor OJT/SS program cannot be used.

http://dot.state.nm.us/en/OEOPFormsManuals.html#OTJforms.

Contractors meeting the selection criteria for implementation of an OJT/SSS program, and who have a formally approved OJT/SSS program will be notified by the NMDOT's CCRB of its training assignment at the beginning of the reporting year, typically commencing with the calendar year beginning in January through December. The reporting year and the training assignment will be identified in the notification from the NMDOT's CCRB.

The Contractor shall fulfill all of the requirements of the OJT training program including the maintenance of records and submittal of periodic reports documenting program performance. The requirements and reports related to the OJT/SSS program shall include the Contractor's use of forms A-2201, A-2202, A-2203. The forms are incorporated herein by reference. The Contractor shall submit Form A-2202 by the tenth (10th) of each month of the reporting period or as indicated on the form itself.

The Contractor has the option to pay its trainees either the full prevailing wage for the trainee's job classification or at least 60% of the minimum prevailing wage for the trainee's job classification for the first half of the training period, 75% for the third quarter, and 90% for the last quarter respectively. Prevailing wages are those specific to this Contract.

For federally-funded Projects, and if requested the Contractor may be reimbursed $0.80 per training hour by the NMDOT. Requests for reimbursement shall be submitted by the Contractor to the Project Manager in writing and after Substantial Completion for the Project is declared. Reimbursement is not available for 100% state-funded Projects.

Noncompliance with the responsibilities and requirements of this section, including being a non-responsive participant in the program, may be cause for the NMDOT to issue a show cause notice and other action as deemed necessary by the NMDOT.

VIII. WAGE RATES

The higher wage rates shall govern in the event of a discrepancy between the minimum wage rates in the Wage Decision of the DWS and the U.S. Department of Labor Wage Decision applicable to this Contract.

IX. LABOR REPORTING AND SUBMISSION OF WEEKLY PAYROLLS

Contractors and Subcontractors must pay employees weekly. Certified Payrolls and Statements of Compliance on federally funded Projects are due to the NMDOT seven (7) Days after date that the actual payment is processed by Contractor or Subcontractor, at any tier, to its employee.

The date that the actual payment is processed to the employee may be different that the payroll end date in some situations. Notwithstanding the difference between a payroll end date and actual payment date, the Contractor or Subcontractor at any tier shall make actual full payment to the employee no later than seven (7) Days after the payroll end date. And then shall submit the Certified Payrolls and Statements of Compliance no later than seven (7) Days after the actual payment date.

The Contractor and Subcontractors at all tiers Working on federal-aid Projects shall use the following EEO Software Programs to report specific EEO, Labor Compliance and DBE information as required by the Contract and as specified by this NTC. The two software programs are:

- B2GNow software
- LCPtracker software

Use of B2GNow and LCPtracker software programs is required and shall be considered Incidental. Failure of a Contractor or Subcontractor to use the required software programs to report specific EEO, Labor Compliance and DBE information may result in the issuance of a Non-Conformance per Standard Specification Section – 109.8.2 "Non-Conformance" or other Contract remedies.

B2GNow - (Business to Government Now), is a web-based software program used to collect, verify and manage payment information for Contractors and Subcontractors working on federal-aid Projects. Additionally, the software is used to collect and report DBE participation and utilization on federal-aid Projects. Information related to the use of the software is available at https://nmdot.dbesystem.com/.

The Contractor shall upload the fully executed contract between the Contractor and Subcontractor at any tier, the completed permission to subcontract form and associated attachments, and subcontract checklist to B2GNow.

LCPtracker - (Labor Compliance Program Tracker) is a web-based software program used to collect, verify and manage prevailing wage certified payrolls and related labor compliance documentation for Contractors and Subcontractors on federal-aid Projects. Information related to the use of the software is available at https://lcpprod.lcptracker.net/.

On all Projects, the Contractor shall submit and shall ensure all Subcontractors submit weekly payroll information into the LCPtracker software program.

To adequately track timely submission of weekly payrolls the Contractor shall enter the actual payment date in the field on the weekly Certified Payroll reporting form in LCPtracker titled "payment date".

Information on access to the software programs, log-on information, use of the programs, available training, user manuals, etc. can be obtained by accessing the web page referenced in this NTC.

X. TITLE VI Assurances Appendix A and E

Appendix A of the Title VI Assurances
49 C.F.R. § Pt. 21, App. A

Appendix A of the Title VI Assurances

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 Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time-to-time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination**: The contractor, with regard to the work performed by it during the contract, 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 either 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 the 49 CFR Part 21.

3. **Solicitations for Subcontracts, 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 the 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 New Mexico Department of Transportation or the Federal Highway Administration 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 this information, the contractor shall so certify to the New Mexico Department of Transportation (NMDOT), or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of the contractor's non-compliance with the nondiscrimination provisions of this contract, the New Mexico Department of Transportation (NMDOT) will impose such contract sanctions as it or the Federal Highway Administration 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 the 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 shall take such action with respect to any subcontract or procurement as the NMDOT or the Federal Highway Administration 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 NMDOT to enter into any litigation to protect the interests of the NMDOT. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Appendix E of the Title VI Assurances

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 non-discrimination 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 displaces or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (29 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 U.S.C. § 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 program 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, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 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 program (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 (U.S.C. 1681 *et seq.*)

NOTICE TO CONTRACTORS

Return of Lobbying Disclosure

Pre-Award

This Project is Federal-aid funded. Per 49 C.F.R. § 20.105 and 31 U.S.C. 1352 the Bidder is prohibited from using Federal-aid funds for certain lobbying activities. In addition to this prohibition, the Bidder is required to certify that no Federal-aid funds have been or will be used for such lobbying activities. The Bidder makes this certification through the submission of its Bid with its digital id. The terms and conditions of the certification appear in the Notice to Contractors ("NTC") titled "Federal Requirements" in the section called "Required Contract Provisions Federal-aid Construction Contracts and Supplements (FHWA-1273)" in subsection "XI Certification Regarding Use of Contract Funds for Lobbying".

In addition to the certification above, if any funds other than Federal-aid 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 Project the attached form titled "Disclosure of Lobbying Activities" ("Disclosure") shall be submitted. After receipt of the notice of preliminary award of contract letter the successful Bidder shall complete and return the Disclosure with the documents in the notice of preliminary award of contract letter.

Failure by the successful Bidder to comply with this Notice to Contractors may constitute just cause for cancellation of the Award and the forfeiture of the Bid Guaranty.

Post-Award

At the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any Disclosure previously submitted the Contractor shall immediately submit an updated Disclosure to the Project Manager.

In addition, for subcontracts at any tier over $100,000.00, the Contractor as a recipient of Federal-aid funds is required to:

1. Add the NTC titled "Federal Requirements" in all subcontracts at any tier. The inclusion of the NTC ensures that the terms and conditions of the certification are incorporated into the Subcontract at any tier;
2. If any funds other than Federal-aid funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or 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 Project require its Subcontractors at any tier to complete and return the Disclosure with its permission to subcontract request form A-1086; and
3. Require its Subcontractors at any tier to submit an updated Disclosure to the Contractor at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any Disclosure previously submitted by the Subcontractor. The Contractor shall immediately submit the same to the Project Manager.

Per 31 U.S.C.A. § 1352 (d)(1)(A)(C)(2) exclusions exist regarding the requirements of this lobbying certification and completion of Disclosure. Some of the applicable exclusions are:

1. Payment of a reasonable compensation made to employed officers or employees of a person requesting or receiving Federal-aid funds.
2. A request of or receipt of a Contract that does not exceed $100,000.00.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse 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

For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ **Prime** ☐ **Subawardee**
Tier _____, *if known*:

Congressional District, *if known*:

5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:

Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(*if individual, last name, first name, MI*):

b. Individuals Performing Services (*including address if different from No. 10a*)
(*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLLA, if necessary)

11. Amount of Payment (*check all that apply*):
$ _____ ☐ **actual** ☐ **planned**

12. Form of Payment (*check all that apply*):
- ☐ **a. cash**
- ☐ **b. in-kind; specify:** nature _____
  value _____

13. Type of Payment (*check all that apply*):
- ☐ **a. retainer**
- ☐ **b. one-time fee**
- ☐ **c. commission**
- ☐ **d. contingent fee**
- ☐ **e. deferred**
- ☐ **f. other; specify:** _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLLA, if necessary)

15. Continuation Sheet(s) SF-LLLA attached: ☐ **Yes** ☐ **No**

16. 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 that $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

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. Use the SF-LLLA Continuation Sheet for additional information if the space on the form is inadequate. 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 followup 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; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include 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 entity 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. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLLA Continuation Sheet(s) is attached.

16. 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 30 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.