

**EXHIBIT 2**

**DEVELOPER'S PROPOSAL COMMITMENTS, ATCS AND SCHEMATICS**

**Appendix 1:**            **Proposal Commitments**

**Appendix 2:**            **ATC's**

**Appendix 3:**            **Schematics**

**Appendix 4:**            **Draft Interim Schematic ROW Adjustments**

## Appendix 1 to Exhibit 2

### Proposal Commitments

Description	Substantial Completion Date
Proposal Commitment Date for Substantial Completion	NTP1 plus 1,269 calendar days

### Proposal Commitments

No.	Proposal Location	Proposal Commitment
1	Development Plan, pg 3-8	Developer shall provide the inspectors with as-built drawings of each bridge component so that they can sketch problems and potential solutions directly on the drawing. Developer shall translate these sketches into Repair Location plans and details, which Developer shall include in the bridge design packages for TxDOT's review.
2	Development Plan, pg 3-10	Round Grove Road (FM3040):  Developer shall not close any portion of the Round Grove Road bridge and shall maintain full access to the mall at all times.
3	Development Plan, pg 3-10	Corporate Drive:  Developer shall not close any portion of the Corporate Drive bridge and shall maintain full access to the mall at all times.
4	Development Plan, pg 3-12	The Developer team shall construct the Lake Lewisville Bridge: <ul style="list-style-type: none"> <li>• Utilizing a side-shifting girder erection truss.</li> <li>• Constructing the deck in two stages, to provide:               <ul style="list-style-type: none"> <li>○ New land-based access to the remaining parts of the superstructure to improve constructability and production; or as better construction means and methods are developed.</li> </ul> </li> </ul>
5	Development Plan, pg 3-13	Fox Ave Bridge abutments shall be built in locations to provide easy extension in the East and West directions to accommodate the Ultimate Project.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
6	Development Plan, pg 3-15	The IH 35E retaining walls that support the frontage roads at North Texas Boulevard shall be designed to the Ultimate Project near the interim exit and entrance ramp and eliminate the need to extend the walls in the future.
7	Development Plan, pg 3-15	The detention pond between the GP lanes at US 77 (STA 1855+00) that shall fulfill Ultimate Project drainage requirements with minor modification during future construction.
8	Development Plan, pg 3-17	Garden Ridge Boulevard shall accommodate the Ultimate Project.
9	Development Plan, pg 3-17	North Texas Boulevard interchange geometry shall accommodate the Ultimate Project configuration with a grade-separated bridge over IH 35E. Additionally, the retaining walls along the frontage roads shall be constructed to the Ultimate Project configuration.
10	Development Plan, pg 3-21	<p>Developer shall hold weekly traffic management task-forces meetings, including TxDOT, public information and communication members, and Developer designers and construction personnel. Developer shall also invite emergency responders, utility companies, and appropriate officials from the cities along the corridor to participate in these meetings.</p> <p>Traffic management task-force meetings shall focus on construction issues and generate accurate travel and schedule information for dissemination to the customer groups. The task force shall promote the flow of information between customer groups and the Project team, as shown in Exhibit 4.2-1. Public Interaction Communications Flow Chart.</p>
11	Development Plan, pg 3-23	Prior to the start of work in any zone, presentation of the proposed construction approach for each Project area shall be discussed in task-force meetings to solicit input from stakeholders and to address and mitigate risks associated with the plans.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
12	Development Plan, pg 3-23	<p>Final traffic control design drawings shall consider the following details:</p> <ul style="list-style-type: none"> <li>• Create detour routes and cross street closures that accommodate traffic volumes and turning movements.</li> <li>• Design diversions and temporary alignments to appropriate geometric standards to keep design speeds equal to or greater than existing speed limits, except where allowable major alignment transitions occur. Developer shall limit these diversions and temporary alignments only to those locations where it is physically impossible to improve geometry and still perform necessary construction activities.</li> <li>• Design barriers and protective works to enhance safety and provide protection for both motorists and construction crews.</li> <li>• Ensure emergency readiness.</li> <li>• Sustain maintenance devices and pavements once placed along the corridor.</li> </ul>
13	Development Plan, pg 3-25	<p>Developer shall maintain existing outside shoulder widths until the very last phase of constructing adjacent pavements. When shoulder reductions are necessary, Developer shall either provide an exit or entrance ramp or emergency pullout spaced approximately every half-mile to 1 mile in each direction to provide a safety zone for motorists. Emergency pullouts shall be at least 10 FT wide and 150 FT long and signed with adequate exit and entrance tapers for pulling in and out of traffic. Developer further commits to always providing a 1-FT minimum buffer between travel lanes and barriers for a no-zero offset.</p>
14	Development Plan, pg 3-26	<p>Our marine equipment shall be lighted. Developer shall install barrels with reflective strips and shall place flashing lights on them at the end of each workday.</p>

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
15	Development Plan, pg 3-26	Developer's PIC plan shall include newsletters, website, and smart phone apps that advise the public of work plans. Along with appropriate signing, Developer's Public Information and Communication Plan shall also include posting notices and flyers at marinas and parking lots to warn park users, boaters, and swimmers to keep out of bridge work areas.
16	Development Plan, pg 3-26	Highland Village and Garden Ridge - To maintain traffic effectively, Developer shall maintain right-turn lane access at both of these locations during all phases of construction. Developer shall also construct a temporary bridge at Garden Ridge to maintain access without needing to use the allowable 60-day closure.
17	Development Plan, pg 3-28	To avoid conflicts between construction traffic and the traveling public, Developer shall provide adequate acceleration and deceleration distances, sight distance, and clear signage at all construction access points.
18	Development Plan, pg 3-28	Construction staff shall be shuttled to worksites from strategically located parking areas.
19	Development Plan, pg 3-28	Our TMP team shall coordinate with law enforcement and emergency response agencies to quickly respond to and clear incidents... Additionally, Developer shall train all construction supervisory personnel in reporting incidents and shall carry the Emergency Response Notification Plan at all times.
20	Development Plan, pg 3-28	Developer shall deliver information to the traveling public including but not limited to the following ways: <ul style="list-style-type: none"> <li>• Project website, including Smartphone apps;</li> <li>• Monthly updates to global positioning satellite system (GPS) service providers;</li> <li>• Electronic DMS, updated daily; and,</li> <li>• Traffic updates via media outlets and social media sites, such as Twitter and Facebook.</li> </ul>
21	Development Plan, pg 3-29	Developer shall advertise and hold public open houses and Project tours where travelers can interact one-on-one with Developer personnel.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
22	Development Plan, pg 3-29	<p>Developer shall make special considerations for business and communities in the PICP, including the following:</p> <ul style="list-style-type: none"> <li>• Inviting representatives to participate in task-force meetings in advance of traffic movements that may affect access to their business or community.</li> <li>• Providing a link to businesses and community organization websites on the Project website, and vice versa.</li> <li>• Identifying opportunities to participate in community fairs and exhibits, such as the City of Lewisville Back 2 School Fair or the City of Carrollton's Neighborhood Networking Forum.</li> <li>• Collaborating with local organizers on special events, such as festivals, exhibitions, and 5K walks/runs, including the City of Lewisville's annual Western Days Festival Kids' Fishing Day at the Lewisville Lake Environmental Learning Area; the City of Highland Village's Lions Club Balloon Festival at Copperas Branch Park; the city of Denton's North Texas State Fair &amp; Rodeo, Redbud Festival, and air show.</li> <li>• Conducting ongoing presentations and one-on-one meetings with surrounding neighborhood and business groups, such as Metrocrest Chamber of Commerce, Oakmont II Homeowners Association, Lake Dallas Independent School District, Metro Tex Association of Realtors Associations, DFW New Car Dealers Associations, and the University of North Texas to ensure Project status and updates are clearly communicated.</li> </ul>
23	Development Plan, pg 3-31	Garden Ridge / DCTA - Developer shall construct a southbound crossover to provide access to the station throughout construction.
24	Development Plan, pg 3-31	In Highland Village, Developer shall stay within TxDOT ROW and separate work areas from public areas to ensure no events would need to be cancelled.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
25	Development Plan, pg 3-31	Developer shall perform all aggregate recycling and dispose commercial and general construction waste at off-site commercial locations.
26	Development Plan, pg 3-32	Developer shall invite key staff from adjacent and intertwined projects, as well as representatives from affected agencies and stakeholders, to applicable task-force meetings to coordinate design and construction activities that may affect them. In turn, Developer shall attend their meetings to ensure two-way communication is achieved.
27	Development Plan, pg 3-32	Developer shall coordinate with the cities of Carrollton, Farmer's Branch, Lewisville, Denton, Lake Dallas, Hickory Creek, Corinth, Dallas, and Highland Village to accommodate any projects that are a part of their master plans.
28	Development Plan, pg 3-32	Developer shall develop a recognizable and relatable brand for the Project to differentiate the corridor from the other active construction projects in the area.
29	Development Plan, pg 3-32	Developer shall design a logo specific to the IH 35E Project.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
30	Development Plan, pg 3-33	<p>Developer shall provide a proactive public information effort to ensure the corridor's many constituencies are provided with the information they need to adjust to the impacts of construction. Developer's public information program shall accomplish the following:</p> <ul style="list-style-type: none"> <li>• Establish and maintain an excellent working relationship with key stakeholders by assigning a dedicated manager to each corridor section.</li> <li>• Guarantee the accuracy of any information disseminated by having the PIC attend weekly construction planning and coordination meetings. The PIC shall provide the construction team with a monthly special events calendar, inform them of any issues, and coordinate meetings with businesses well in advance of planned traffic impacts.</li> <li>• Elicit feedback from local community leaders through surveys that shall be conducted every six months using an online tool, Survey Monkey.</li> <li>• Deliver reliable, timely Project information, and continuously improve two-way communication with stakeholder groups. Developer shall accomplish this by initiating one-on-one meetings with key stakeholders during preconstruction activities to inform them of Project details, timelines, and identify Developer's public information and communications staff.</li> <li>• Crisis communications for Project-related emergencies shall be handled on-site until the crisis is resolved. Developer shall ensure that access is maintained to Corinth Parkway or Post Oak Drive at all times for emergencies as part of the TMP.</li> <li>• Work in conjunction with TxDOT to prepare and submit a PICP within 30 days of NTP1.</li> </ul>
31	Development Plan, pg 3-34	<p>The Project website shall provide direction on how to reach impacted businesses, and, in-turn, Developer shall ask that the affected business provide a link on its website to the Project website.</p>



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No.	Proposal Location	Proposal Commitment
32	Development Plan, pg 3-34	Developer shall contact GPS service providers, such as MapQuest, Garmin, and TomTom, to provide updated maps showing new alignments and detours for travelers. For example, when ramps are opened and closed for construction, the GPS provider shall be advised to update their maps to show new access.
33	Development Plan, pg 3-34	Project Briefings and Tours: Both one-on-one and small group briefings shall begin with local government officials and other stakeholders immediately following approval of the PICP. Developer shall meet with public officials first so they are ahead of the information curve. Once the Project is under way, Developer shall arrange for occasional work zone tours to give public officials, stakeholder groups, and interested citizens and opportunity to see the work progress.
34	Development Plan, pg 3-34	Shortly after NTP2, Developer shall hold a public open house to provide interested local citizens the opportunity to learn more about the Project and to meet the Project team. Developer shall make Project plans and schedules available so that local residents can know what to expect.
35	Development Plan, pg 3-34	Developer shall reach out to stakeholders instead of relying on them to attend Project-related public events by asking them if make presentations can be made to their constituent groups. Developer shall offer presentations to business organizations, neighborhood associations, chambers of commerce, and school districts throughout the Project duration.
36	Development Plan, pg 3-35	Public information task-force meetings shall be held weekly. To optimize their effectiveness, Developer shall invite specific stakeholder committees to participate in the meetings at least once a month to ensure concerns are heard and to provide timely and accurate communications.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
37	Development Plan, pg 3-35	IH 35E Stakeholder Communications – Public relations staff from affected organizations and locations shall focus on positive messaging and coping strategies. The Developer team shall form this committee within 60 days of NTP1. The PIC shall meet with the Stakeholder Communications Committee monthly to hear and respond to concerns. Developer shall leverage the communication channels, such as newsletters, websites, and social media networks of representatives on the Stakeholder Communications Committee to extend the reach of messages and information.
38	Development Plan, pg 3-35	Public officials affected by or interested in the Project shall be invited to attend a monthly briefing that is designed to provide advance notice of high-level Project issues. The briefing shall provide an opportunity for them to ask questions in a discrete venue.
39	Development Plan, pg 3-36	Therefore, immediately following NTP1, Developer shall form a communications task force with TxDOT that meets weekly.
40	Development Plan, pg 3-36	Developer shall also prepare weekly construction bulletins that summarize current lane closures, restrictions, construction status, and traffic diversions; and responds to frequently asked questions—and shall distribute this information to the Project’s email list and website.
41	Development Plan, pg 3-36	Developer’s communication task-force meetings shall focus on business community leaders, including special event organizers and chamber of commerce members. Developer shall provide customized information that can be included in their promotional materials. Developer shall hold communication fairs that shall help businesses develop outreach campaigns that will help keep their customers coming.
42	Development Plan, pg 3-38	Developer shall complete all sections of the IH 35E Project 1,269 days following NTP1.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
43	Development Plan, pg 3-48	All lead personnel shall have tablets or laptops connected wirelessly to the Project server, and Smartphones with email capability. These shall sync with Developer's Project Management Systems to provide real-time updates of field work, such as material deliveries, inspection results, haul-time cycles, and production rates.
44	Development Plan, pg 3-48	Upon NTP1, subconsultant and subcontractor team members shall participate in Project design, quality, and safety workshops—as well as planning, construction status, and schedule meetings held by Developer. By terms of their subcontract, they shall follow the Developer playbooks for quality, safety, and environmental procedures; as well as being insured and bonded.
45	Development Plan, pg 3-49	Developer shall use task forces to coordinate with representatives of affected utilities and railroads. Developer shall invite utility and railroad owners to weekly task-force meetings or go to their offices to coordinate specific issues.
46	Development Plan, pg 3-62	Developer shall use a number of methods to manage the DBE program effectively, including, but not limited to, the following: <ul style="list-style-type: none"> <li>• Developing and maintaining lists of DBE bidders from the Texas Unified Certification Program directory and local, state, and national minority trade associations;</li> <li>• Structuring procurement packages to afford DBEs maximum participation;</li> <li>• Reviewing solicitations to remove statements and clauses that restrict DBE participation;</li> <li>• Attending business opportunity workshops, DBE seminars, and trade fairs; and,</li> <li>• Monitoring attainment of proposed goals.</li> </ul>
47	Development Plan, pg 3-64	Whenever possible, work packages shall be divided into sizes that can be easily performed by DBEs. The Developer team shall evaluate each package to determine a feasible size and shall consider the capacity of DBE partners.

## Proposal Commitments

No.	Proposal Location	Proposal Commitment
48	Development Plan, pg 3-64	Developer shall conduct a series of educational workshops for subcontractors who are interested in additional training. Topics for these workshops shall include contracts, contract negotiation, bonding, DB method, construction law, safety and OSHA requirements, taxes, and payroll requirements.
49	Development Plan, pg 3-70	As warranted for structural and other special and complex designs, the DM shall arrange for independent design checks. These checks shall be performed either by a separated design firm or by a separate office of the firm preparing the design, but who were not involved with the original design.
50	Development Plan, pg 3-75	Developer shall involve Developer's capital maintenance team in design development to seamlessly transition from the construction phase to capital maintenance activities and to develop the most maintenance-free elements possible. Experienced maintenance staff shall continually provide feedback specifically targeted at cost-effective maintenance solutions during the design phase.

## Appendix 2 to Exhibit 2

### Developer's ATC's

The following table lists Developer's alternative technical concepts (ATCs), which are described in further detail in the ATC submittals and clarifications, which Developer may incorporate into the Project. The Deviations set forth in the ATC submittals are approved by TxDOT subject to satisfaction of any conditions set forth in the letters from TxDOT to Developer. Such Deviations, subject to satisfaction of any listed "conditions," expressly supersede any conflicting provisions in the Technical Provisions, as provided in Section 1.2.2 of the Development Agreement. The ATCs, to the extent utilized by the Developer, shall otherwise meet all requirements of the Technical Provisions.

<b>ATC No.</b>	<b>Brief Description</b>	<b>Date ATC Initially Submitted to TxDOT</b>	<b>Date(s) of Clarification(s) submitted to TxDOT re ATC</b>	<b>Date ATC Approval Letter</b>
ATC-01	Redesign at Belt Line Road	7/13/2012	8/1/2012 8/24/2012 9/14/2012 1/25/2013	10/5/2012 2/1/2013
ATC-04	Garden Ridge Interchange flip	7/13/2012	8/1/2012	9/19/2012
ATC-11	Performance Design Measures for Rigid Pavement Design	7/13/2012	8/1/2012	9/21/2012
ATC-13	Rubberized SMA	7/13/2012	8/1/2012	9/21/2012
ATC-28	ESAL values	8/24/2012		9/21/2012

ATC-29	Go to partial-depth shoulders	8/24/2012		9/21/2012
ATC-30	First flush	8/24/2012		9/21/2012

**Appendix 3 to Exhibit 2**

**Schematics**

**See attached CD**

**Appendix 4 to Exhibit 2**

**Draft Interim Schematic ROW Adjustments**

Not used.



**EXHIBIT 3**  
**FEDERAL REQUIREMENTS**

<b><u>Exhibit Description</u></b>	<b><u>No. of Pages</u></b>
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	14
Attachment 3 – Federal Prevailing Wage Rate	4
Attachment 4 – Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)	6
Attachment 5 – Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)	5
Attachment 6 – Certification Regarding Use of Contract Funds for Lobbying	1
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1
Attachment 9 – On-the-Job Training Program	1

## ATTACHMENT 1 TO EXHIBIT 3

### FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

(a) "contracting officer" or "authorized representative", such references shall be construed to mean TxDOT or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder" "Federal-aid construction contractor", "prospective first tier participant" or First Tier Participant such references shall be construed to mean Developer or its authorized representative;

(c) "contract", "prime contract", Federal-aid construction contract" or "design-build contract" such references shall be construed to mean the Development Agreement between Developer and TxDOT for the Project;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" "lower tier prospective participant", Lower Tier participant" or "lower tier subcontractor", such references shall be construed to mean any Subcontractor or Supplier; and

(e) "department", "agency", "department or agency with which this transaction originated" or "contracting agency" such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to

make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING.** — Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the Agreement and the TxDOT Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

#### CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

b. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

#### ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), Developer and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Developer and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), Developer and its subcontractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. Developer agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

**ATTACHMENT 2 TO EXHIBIT 3**  
**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**  
**FHWA Form 1273**

[See attached.]

**REQUIRED CONTRACT PROVISIONS**  
**FEDERAL-AID CONSTRUCTION CONTRACTS**

- I. General
- II. Nondiscrimination
- III. Nonsegregated 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 Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

**ATTACHMENTS**

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

**I. GENERAL**

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

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## **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.

## **2. 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.

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**XI. 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.

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**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.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.



**ATTACHMENT 3 TO EXHIBIT 3**  
**FEDERAL PREVAILING WAGE RATE**

*[See Attached.]*

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-6-2012

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE	ZONE
		TX07 1/6/12	TX08 1/6/12	TX11 1/6/12	TX12 1/6/12	TX14 1/6/12	TX16 1/6/12	TX18 1/6/12	TX34 1/6/12	TX35 1/6/12	TX37 1/6/12	TX38 1/6/12	TX40 1/6/12	TX41 1/6/12	TX54 1/6/12	TX56 1/6/12	TX63 1/6/12	
1423	Agricultural Tractor Operator																	
1300	Asphalt Distributor Operator	\$14.87	\$13.48	\$13.88														
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87													
1108	Asphalt Raker	\$12.28	\$10.67	\$12.02	\$14.21													
1112	Batching Plant Operator, Asphalt																	
1116	Batching Plant Operator, Concrete																	
1214	Blaster																	
1615	Boom Truck Operator																	
1444	Boring Machine Operator																	
1305	Brooms or Sweeper Operator	\$11.21	\$10.33	\$10.08														
1144	Communications Cable Installer																	
1124	Concrete Finisher, Paving and Structures	\$13.55	\$12.46	\$13.16	\$12.85													
1318	Concrete Pavement Finishing Machine Operator																	
1315	Concrete Paving, Cutting, Float, Texturing Machine Operator																	
1333	Concrete Saw Operator																	
1399	Concrete/Gunite Pump Operator																	
1344	Crane Operator, Hydraulic 80 tons or less																	
1345	Crane Operator, Hydraulic Over 80 Tons																	
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$18.62	\$14.38	\$13.85														
1343	Crane Operator, Lattice Boom Over 80 Tons																	
1308	Crawler Tractor Operator	\$18.88	\$16.85	\$13.82														
1351	Crusher or Screen Plant Operator																	
1448	Directional Drilling Locator																	
1445	Directional Drilling Operator																	
1136	Electrician	\$20.68		\$19.87														
1347	Excavator Operator, 50,000 pounds or less	\$18.46	\$12.56	\$13.97														
1343	Excavator Operator, Over 50,000 pounds		\$15.23	\$13.62														
1160	Flagger	\$8.30	\$8.10	\$8.80														
1151	Form Builder/Setter, Structures	\$13.52	\$12.30	\$13.38	\$12.91													
1180	Form Setter, Paving & Curb	\$12.36	\$12.16	\$13.88	\$11.83													
1380	Foundation Drill Operator, Crawler Mounted																	
1363	Foundation Drill Operator, Truck Mounted																	
1389	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40														
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33														
1329	Joint Sealer																	
1172	Laborer, Common	\$10.30	\$9.86	\$10.08	\$10.51													
1175	Laborer, Utility	\$11.80	\$11.55	\$12.70	\$12.17													
1346	Loader/Backhoe Operator	\$14.18	\$12.77	\$12.97	\$16.08													

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/8/12	ZONE TX08 1/8/12	ZONE TX11 1/8/12	ZONE TX14 1/8/12	ZONE TX18 1/8/12	ZONE TX19 1/8/12	ZONE TX24 1/8/12	ZONE TX35 1/8/12	ZONE TX37 1/8/12	ZONE TX38 1/8/12	ZONE TX49 1/8/12	ZONE TX41 1/8/12	ZONE TX54 1/8/12	ZONE TX68 1/8/12	ZONE TX83 1/8/12
1187	Mechanic	\$15.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47	\$17.47
1188	Milling Machine Operator	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54	\$14.54
1189	Motor Grader Operator, Fine Grade	\$17.49	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52	\$15.52
1190	Motor Grader Operator, Rough	\$16.15	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42	\$14.42
1191	Off Road Hauler		\$10.98													
1192	Pavement Marking Machine Operator	\$15.42		\$13.10		\$15.17	\$10.01									
1193	Percussion or Rotary Drill Operator															
1202	Pile Driver															
1203	Pile Driver		\$11.87			\$12.79		\$11.37	\$13.24	\$12.55		\$11.17	\$11.87		\$14.95	\$12.12
1204	Pile Driver	\$12.85		\$12.85		\$12.85		\$12.85		\$12.85		\$12.85		\$12.85		\$12.85
1205	Reinforcing Steel Worker	\$13.30	\$14.07	\$17.33		\$14.00		\$16.48	\$12.74	\$12.74	\$15.83		\$17.10		\$15.15	\$11.55
1206	Roller Operator, Asphalt	\$10.35		\$11.95		\$12.79	\$11.51		\$13.08	\$12.35	\$11.55		\$12.04	\$11.71	\$11.95	\$11.57
1207	Roller Operator, Other	\$10.35		\$10.44		\$10.50	\$11.54		\$11.51	\$10.30	\$10.30		\$11.22	\$13.55	\$13.47	
1208	Scraper Operator	\$10.51	\$11.07	\$10.95		\$12.27		\$11.12	\$12.56	\$11.98	\$11.43		\$11.22	\$13.55	\$13.47	
1209	Self-Propelled Hammer Operator															
1210	Server	\$13.58	\$12.34	\$14.11		\$14.51	\$15.95	\$13.44	\$14.58	\$14.31	\$13.83		\$12.43	\$13.72	\$13.97	
1211	Sign Erector															
1212	Slurry Seal or Micro-Surfacing Machine Operator															
1213	Small Bluffing Machine Operator															
1214	Small Bluffing Machine Operator															
1215	Spreader Box Operator	\$12.50		\$13.12		\$14.04		\$14.72	\$13.84	\$13.55			\$13.45	\$11.83	\$13.58	
1216	Structural Steel Welder					\$15.25									\$14.33	
1217	Structural Steel Worker					\$16.00										
1218	Subgrade Trimmer					\$18.45										
1219	Telecommunication Technician															
1220	Tractor Operator, Pave Worker															
1221	Tractor Operator, Heavy															
1222	Trenching Machine Operator, Light	\$14.45	\$13.83	\$13.41		\$15.00	\$15.93	\$15.55	\$16.24	\$15.39	\$14.30		\$12.83	\$14.38	\$15.03	
1223	Truck Driver Lowboy Float								\$14.14							
1224	Truck Driver Transmixer	\$12.74	\$10.52	\$10.75		\$14.79	\$13.53	\$13.15	\$13.24	\$13.40	\$10.30	\$11.61		\$11.97	\$11.45	
1225	Truck Driver, Single AXLE	\$11.35	\$14.53	\$11.95		\$11.53		\$14.05	\$12.52	\$11.45	\$12.38		\$12.05	\$11.68	\$11.49	\$11.10
1226	Truck Driver, Single or Tandem Aisle Dump Truck	\$12.45	\$12.73	\$12.50		\$12.81	\$13.46		\$12.85	\$15.23	\$12.30			\$13.95	\$12.27	
1227	Truck Driver, Tandem Aisle Tractor with Semi Trailer															
1228	Tunneling Machine Operator, Heavy															
1229	Tunneling Machine Operator, Light															
1230	Welder	\$12.02	\$12.86	\$11.45		\$15.97		\$13.74	\$14.84					\$13.78		
1231	Work Zone Barricade Servicer	\$10.30	\$12.86	\$11.45	\$11.70	\$11.85	\$10.77		\$11.68	\$12.20	\$11.22	\$11.51	\$12.95	\$10.54	\$11.57	

Notes:

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week. The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' Standard Job Classifications for Highway, Heavy, Utilities, and Industrial Construction in Texas. AGC will make it available on its Web site for any contractor.

**TEXAS COUNTIES IDENTIFIED BY  
WAGE RATE ZONES: 7, 8, 11, 12, 14, 16, 18, 34, 35, 37, 38, 40, 41, 54, 56, 63**

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	38	Donley	54	Kames	37	Reagan	54
Andrews	54	Duval	41	Kaufman	36	Real	54
Angelina	38	Eastland	54	Kendall	16	Red River	38
Aransas	40	Ector	7	Kenedy	41	Reeves	18
Archer	35	Edwards	18	Kent	54	Refugio	37
Armstrong	7	El Paso	34	Kerr	37	Roberts	54
Atascosa	16	Ellis	35	Kimble	54	Robertson	16
Austin	56	Erath	38	King	54	Rockwall	35
Bailey	54	Falls	38	Kinney	18	Runnels	54
Bandera	16	Fannin	38	Kleberg	37	Rusk	11
Bastrop	16	Fayette	37	Knox	54	Sabine	38
Baylor	54	Fisher	54	Lamar	36	San Augustine	38
Bee	37	Floyd	54	Lamb	54	San Jacinto	56
Bell	16	Foard	54	Lampasas	16	San Patricio	40
Bexar	16	Fort Bend	56	LaSalle	41	San Saba	54
Blanco	37	Franklin	38	Lavaca	37	Schleicher	54
Borden	54	Freestone	38	Lee	37	Scurry	54
Bosque	38	Frio	37	Leon	36	Shackelford	54
Bowie	11	Gaines	54	Liberty	56	Shelby	38
Brazoria	56	Galveston	56	Limestone	36	Sherman	54
Brazos	16	Garza	54	Lipscomb	54	Smith	11
Brewster	18	Gillespie	37	Live Oak	37	Somervell	38
Briscoe	54	Glasscock	54	Llano	37	Starr	41
Brooks	41	Goliad	40	Loving	54	Stephens	54
Brown	54	Gonzales	37	Lubbock	7	Sterling	54
Burleson	16	Gray	54	Lynn	54	Stonewall	54
Burnet	37	Grayson	35	Madison	38	Sutton	18
Caldwell	16	Gregg	11	Marion	38	Swisher	54
Calhoun	40	Grimes	38	Martin	54	Tarrant	35
Callahan	35	Guadalupe	16	Mason	37	Taylor	7
Cameron	8	Hale	54	Matagorda	37	Terrell	18
Camp	38	Hall	54	Maverick	41	Terry	54
Carson	7	Hamilton	38	McCulloch	54	Throckmorton	54
Cass	38	Hansford	54	McLennan	16	Titus	38
Castro	54	Hardeman	54	McMullen	41	Tom Green	7
Chambers	56	Hardin	56	Medina	16	Travis	16
Cherokee	38	Harris	56	Menard	54	Trinity	38
Childress	54	Harrison	63	Midland	7	Tyler	38
Clay	35	Hartley	54	Milam	38	Upshur	11
Cochran	54	Haskell	54	Mills	54	Upton	54
Coke	54	Hays	18	Mitchell	54	Uvalde	41
Coleman	54	Hemphill	54	Montague	54	Val Verde	18
Collin	35	Henderson	38	Montgomery	56	Van Zandt	38
Collingsworth	54	Hidalgo	8	Moore	54	Victoria	14
Colorado	37	Hill	38	Morris	38	Walker	38
Comal	16	Hockley	54	Motley	54	Waller	56
Comanche	54	Hood	38	Nacogdoches	38	Ward	54
Concho	54	Hopkins	38	Navarro	38	Washington	38
Cooke	54	Houston	38	Newton	38	Webb	8
Coryell	16	Howard	54	Nolan	54	Wharton	37
Cottle	54	Hudspeth	18	Nueces	40	Wheeler	54
Crane	54	Hunt	35	Ochiltree	54	Wichita	12
Crockett	18	Hutchinson	54	Oldham	54	Wilbarger	54
Crosby	7	Inon	7	Orange	56	Willacy	41
Culberson	18	Jack	38	Palo Pinto	38	Williamson	16
Dallam	54	Jackson	37	Panola	38	Wilson	16
Dallas	35	Jasper	38	Parker	35	Winkler	54
Dawson	54	Jeff Davis	18	Parmer	54	Wise	35
Deaf Smith	54	Jefferson	56	Pecos	18	Wood	38
Delta	35	Jim Hogg	41	Polk	38	Yoakum	54
Denton	35	Jim Wells	37	Potter	7	Young	54
DeWitt	37	Johnson	35	Presidio	18	Zapata	41
Dickens	54	Jones	35	Rains	38	Zavala	41
Dimmit	41			Randall	7		

Revised 1-8-12

**ATTACHMENT 4 TO EXHIBIT 3**

**SPECIAL PROVISION**

**000---006**

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

1. As used in these specifications:
  - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or

through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's

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

- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.



- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
  15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

ATTACHMENT 5 TO EXHIBIT 3

**SPECIAL PROVISION**

000---004

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

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. **Goals.**

- a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
- b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

<b>Goals for minority participation in each trade (percent)</b>	<b>Goals for female participation in each trade (percent)</b>
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See Table 1

6.9

- c. 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 Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision 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 and 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.

- d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.
3. **Subcontracting.** The Contractor shall provide written notification to the Department 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 pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
  4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
  5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**Table 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

County	Goals for Minority Participation	County	Goals for Minority Participation
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

## ATTACHMENT 6 TO EXHIBIT 3

### CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the Agreement or Subcontract, each prospective Developer and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective Developer/subcontractor certifies, to the best of its 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 any 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, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
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. Developer/subcontractor 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.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]



## **ATTACHMENT 7 TO EXHIBIT 3**

### **COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

Developer shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the Agreement only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the Agreement.

Concurrently with execution of the Agreement, Developer has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, Developer is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Agreement be investigated, Developer has the burden of proof to establish that it is in compliance.

At Developer's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 13.3 of the Agreement.

## BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

- A. Developer shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Contract Price.
- B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this Contract be investigated, Developer has the burden of proof to establish that it is in compliance.
- C. At Developer's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

<b>PROPOSER</b>	
<b>SIGNATURE</b>	
<b>NAME (printed or typed)</b>	
<b>TITLE</b>	
<b>DATE</b>	

## ATTACHMENT 8 TO EXHIBIT 3

2004 Specifications

### **SPECIAL PROVISION**

**000---009**

#### **Certification of Nondiscrimination in Employment**

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

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

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

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

## ATTACHMENT 9 TO EXHIBIT 3

2004 Specifications

### **SPECIAL PROVISION**

**000--2638**

#### **On-the-Job Training Program**

- 1. Description.** The primary objective of this Special Provision is the training and advancement of minorities, women and economically disadvantaged persons toward journeyworker status. Accordingly, 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 shall not be used to discriminate against any applicant for training, whether or not he/she is a member of a minority group.
- 2. Trainee Assignment.** Training assignments are based on the past volume of state-let highway construction contracts awarded with the Department. Contractors meeting the selection criteria will be notified of their training assignment at the beginning of the reporting year by the Department's Office of Civil Rights.
- 3. Program Requirements.** Fulfill all of the requirements of the On-the-Job Training Program including the maintenance of records and submittal of periodic reports documenting program performance. Trainees shall be paid at least 60% of the appropriate minimum journeyworker's rate specified in the contract for the first half of the training period, 75% for the third quarter, and 90% for the last quarter, respectively.
- 4. Reimbursement.** If requested, contractors may be reimbursed \$0.80 per training hour at no additional cost to the Department. Training may occur on this project, all other Department contracts, or local-administered federal-aid projects with concurrence of the local government entity. However, reimbursement for training is not available on projects to the extent that such projects that do not contain federal funds.
- 5. Compliance.** The Contractor will have fulfilled the contractual responsibilities by having provided acceptable training to the number of trainees specified in their goal assignment. Noncompliance may be cause for corrective and appropriate measures pursuant to Article 8.6., "Abandonment of Work or Default of Contract," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

## EXHIBIT 4

### TXDOT-PROVIDED APPROVALS

1. South Segment: Final Environmental Assessment and Finding of No Significant Impact ("FONSI") issued by Federal Highway Administration ("FHWA") for south segment of Ultimate Project in December 2011 and the FHWA concurrence dated February 15, 2013.
2. Middle Segment: Final Environmental Assessment, Section 4(f) Evaluations and FONSI issued by FHWA for middle segment of Ultimate Project in January 2011, and by United States Army Corps of Engineers ("USACE") in February 2011, and re-evaluation approved by FHWA on April 18, 2013.
3. North Segment: Final Environmental Assessment and FONSI issued by FHWA for north segment of Ultimate Project in January 2012 and re-evaluation approved by FHWA on March 11, 2013.
4. Section 404 permits from USACE/Section 401 Water Quality Certification from Texas Commission on Environmental Quality (TCEQ) based on the specific roadway work and linear transportation crossings identified in the permits and associated with the Draft Interim Schematic and Draft Interim Schematic ROW
5. 35E Parks Mitigation Master Plan addressing Section 4(f) requirements for the middle segment.
6. Environmental Permits, Issues and Commitments (EPIC) Sheets for South, Middle and North Segments
7. Design Exceptions specifically indicated in Technical Provisions Section 11.2.4.

## EXHIBIT 5

### MAXIMUM PAYMENT SCHEDULE

Total Maximum Payment Schedule  
(all figures are in U.S. dollars)

Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
1	\$0.00	\$0.00
2	\$8,530,961.00	\$8,530,961.00
3	\$9,286,351.00	\$17,817,312.00
4	\$7,182,688.00	\$25,000,000.00
5	\$2,000,000.00	\$27,000,000.00
6	\$46,530,489.00	\$73,530,489.00
7	\$15,089,344.00	\$88,619,833.00
8	\$14,722,195.00	\$103,342,028.00
9	\$13,975,745.00	\$117,317,773.00
10	\$17,434,535.00	\$134,752,308.00
11	\$16,720,659.00	\$151,472,967.00
12	\$18,400,920.00	\$169,873,887.00
13	\$20,074,371.00	\$189,948,258.00
14	\$20,284,706.00	\$210,232,964.00
15	\$25,027,579.00	\$235,260,543.00
16	\$26,461,019.00	\$261,721,562.00
17	\$30,422,937.00	\$292,144,499.00
18	\$33,695,180.00	\$325,839,679.00
19	\$39,415,676.00	\$365,255,355.00
20	\$41,974,543.00	\$407,229,898.00
21	\$40,957,935.00	\$448,187,833.00
22	\$41,326,054.00	\$489,513,887.00
23	\$37,662,428.00	\$527,176,315.00
24	\$35,831,837.80	\$563,008,152.80
25	\$23,851,266.19	\$586,859,418.99
26	\$23,195,643.34	\$610,055,062.32
27	\$16,633,714.10	\$626,688,776.43
28	\$15,414,715.57	\$642,103,492.00
29	\$23,410,874.13	\$665,514,366.12
30	\$22,619,633.28	\$688,133,999.40
31	\$20,589,348.54	\$708,723,347.95
32	\$27,660,061.80	\$736,383,409.74
33	\$19,980,729.91	\$756,364,139.66

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
34	\$10,947,867.33	\$767,312,006.99
35	\$8,535,105.51	\$775,847,112.49
36	\$7,503,012.03	\$783,350,124.53
37	\$5,706,408.05	\$789,056,532.58
38	\$4,482,781.40	\$793,539,313.98
39	\$14,870,545.54	\$808,409,859.52
40	\$14,008,898.65	\$822,418,758.17
41	\$13,014,963.76	\$835,433,721.93
42	\$10,362,223.07	\$845,795,945.00
<b>TOTALS</b>		<b>\$845,795,945.00</b>

**EXHIBIT 5-1**

**MAXIMUM PAYMENT SCHEDULE – OPTION 1**

(all figures are in U.S. dollars) Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$1,404,396.00	\$1,404,396.00
14	\$1,419,111.00	\$2,823,507.00
15	\$1,750,921.00	\$4,574,428.00
16	\$1,851,204.00	\$6,425,632.00
17	\$2,128,379.00	\$8,554,011.00
18	\$2,357,304.00	\$10,911,315.00
19	\$2,757,508.00	\$13,668,823.00
20	\$2,936,517.00	\$16,605,340.00
21	\$2,865,404.00	\$19,470,744.00
22	\$2,891,156.00	\$22,361,900.00
23	\$2,459,097.00	\$24,820,997.00
24	\$1,177,511.00	\$25,998,508.00
25	\$1,289,687.00	\$27,288,195.00
26	\$1,541,280.00	\$28,829,475.00
27	\$1,109,858.00	\$29,939,333.00
28	\$1,023,599.00	\$30,962,932.00
29	\$1,572,730.00	\$32,535,662.00
30	\$1,497,507.00	\$34,033,169.00
31	\$1,367,656.00	\$35,400,825.00
32	\$1,859,294.00	\$37,260,119.00
33	\$1,750,825.00	\$39,010,944.00
34	\$1,549,683.00	\$40,560,627.00
35	\$1,505,564.00	\$42,066,191.00
36	\$1,032,420.00	\$43,098,611.00
37	\$400,154.00	\$43,498,765.00
38	\$314,349.00	\$43,813,114.00



(all figures are in U.S. dollars) Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
39	\$261,996.00	\$44,075,110.00
40	\$197,902.00	\$44,273,012.00
41	\$123,968.00	\$44,396,980.00
42	\$111,020.00	\$44,508,000.00

TOTALS

\$44,508,000.00

**EXHIBIT 5-2**

**MAXIMUM PAYMENT SCHEDULE – OPTION 2**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$1,887,170.00	\$1,887,170.00
14	\$1,906,943.00	\$3,794,113.00
15	\$2,352,815.00	\$6,146,928.00
16	\$2,487,571.00	\$8,634,499.00
17	\$2,860,027.00	\$11,494,526.00
18	\$3,167,647.00	\$14,662,173.00
19	\$3,705,424.00	\$18,367,597.00
20	\$3,945,969.00	\$22,313,566.00
21	\$3,850,410.00	\$26,163,976.00
22	\$3,885,017.00	\$30,048,993.00
23	\$3,304,432.00	\$33,353,425.00
24	\$1,582,290.00	\$34,935,715.00
25	\$1,733,028.00	\$36,668,743.00
26	\$2,071,108.00	\$38,739,851.00
27	\$1,491,381.00	\$40,231,232.00
28	\$1,375,470.00	\$41,606,702.00
29	\$2,113,369.00	\$43,720,071.00
30	\$2,012,288.00	\$45,732,359.00
31	\$1,837,799.00	\$47,570,158.00
32	\$2,498,441.00	\$50,068,599.00
33	\$2,352,686.00	\$52,421,285.00
34	\$2,082,400.00	\$54,503,685.00
35	\$2,023,114.00	\$56,526,799.00
36	\$1,387,323.00	\$57,914,122.00
37	\$537,710.00	\$58,451,832.00

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
38	\$422,409.00	\$58,874,241.00
39	\$352,059.00	\$59,226,300.00
40	\$265,933.00	\$59,492,233.00
41	\$166,583.00	\$59,658,816.00
42	\$149,184.00	\$59,808,000.00

TOTALS

\$59,808,000.00

**EXHIBIT 5-3**

**MAXIMUM PAYMENT SCHEDULE - OPTION 3**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$866,720.00	\$866,720.00
14	\$875,801.00	\$1,742,521.00
15	\$1,080,577.00	\$2,823,098.00
16	\$1,142,466.00	\$3,965,564.00
17	\$1,313,524.00	\$5,279,088.00
18	\$1,454,804.00	\$6,733,892.00
19	\$1,701,789.00	\$8,435,681.00
20	\$1,812,264.00	\$10,247,945.00
21	\$1,768,377.00	\$12,016,322.00
22	\$1,784,268.00	\$13,800,590.00
23	\$1,517,626.00	\$15,318,216.00
24	\$726,698.00	\$16,044,914.00
25	\$795,927.00	\$16,840,841.00
26	\$951,197.00	\$17,792,038.00
27	\$684,946.00	\$18,476,984.00
28	\$631,712.00	\$19,108,696.00
29	\$970,606.00	\$20,079,302.00
30	\$924,183.00	\$21,003,485.00
31	\$844,045.00	\$21,847,530.00
32	\$1,147,458.00	\$22,994,988.00
33	\$1,080,517.00	\$24,075,505.00
34	\$956,383.00	\$25,031,888.00

Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
35	\$929,155.00	\$25,961,043.00
36	\$637,156.00	\$26,598,199.00
37	\$246,954.00	\$26,845,153.00
38	\$194,000.00	\$27,039,153.00
39	\$161,690.00	\$27,200,843.00
40	\$122,135.00	\$27,322,978.00
41	\$76,506.00	\$27,399,484.00
42	\$68,516.00	\$27,468,000.00

TOTALS

\$27,468,000.00
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**EXHIBIT 5-4**

**MAXIMUM PAYMENT SCHEDULE – OPTION 4**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$0.00	\$0.00
14	\$0.00	\$0.00
15	\$0.00	\$0.00
16	\$0.00	\$0.00
17	\$0.00	\$0.00
18	\$0.00	\$0.00
19	\$0.00	\$0.00
20	\$0.00	\$0.00
21	\$0.00	\$0.00
22	\$0.00	\$0.00
23	\$0.00	\$0.00
24	\$0.00	\$0.00
25	\$0.00	\$0.00
26	\$0.00	\$0.00
27	\$0.00	\$0.00
28	\$0.00	\$0.00
29	\$0.00	\$0.00
30	\$0.00	\$0.00
31	\$0.00	\$0.00
32	\$0.00	\$0.00
33	\$0.00	\$0.00
34	\$0.00	\$0.00
35	\$0.00	\$0.00
36	\$0.00	\$0.00
37	\$0.00	\$0.00

Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
38	\$0.00	\$0.00
39	\$0.00	\$0.00
40	\$0.00	\$0.00
41	\$0.00	\$0.00
42	\$1.00	\$1.00

TOTALS

\$1.00
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**EXHIBIT 5-5**

**MAXIMUM PAYMENT SCHEDULE – OPTION 5**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$950,653.00	\$950,653.00
14	\$960,614.00	\$1,911,267.00
15	\$1,185,220.00	\$3,096,487.00
16	\$1,253,102.00	\$4,349,589.00
17	\$1,440,725.00	\$5,790,314.00
18	\$1,595,687.00	\$7,386,001.00
19	\$1,866,590.00	\$9,252,591.00
20	\$1,987,763.00	\$11,240,354.00
21	\$1,939,626.00	\$13,179,980.00
22	\$1,957,060.00	\$15,137,040.00
23	\$1,664,592.00	\$16,801,632.00
24	\$797,071.00	\$17,598,703.00
25	\$873,005.00	\$18,471,708.00
26	\$1,043,311.00	\$19,515,019.00
27	\$751,276.00	\$20,266,295.00
28	\$692,887.00	\$20,959,182.00
29	\$1,064,600.00	\$22,023,782.00
30	\$1,013,681.00	\$23,037,463.00
31	\$925,783.00	\$23,963,246.00
32	\$1,258,578.00	\$25,221,824.00
33	\$1,185,154.00	\$26,406,978.00
34	\$1,048,999.00	\$27,455,977.00
35	\$1,019,134.00	\$28,475,111.00
36	\$698,858.00	\$29,173,969.00
37	\$270,869.00	\$29,444,838.00



Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
38	\$212,786.00	\$29,657,624.00
39	\$177,348.00	\$29,834,972.00
40	\$133,962.00	\$29,968,934.00
41	\$83,915.00	\$30,052,849.00
42	\$75,151.00	\$30,128,000.00

TOTALS

\$30,128,000.00

**EXHIBIT 5-6**

**MAXIMUM PAYMENT SCHEDULE - OPTION 6**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$656,571.00	\$656,571.00
14	\$663,451.00	\$1,320,022.00
15	\$818,576.00	\$2,138,598.00
16	\$865,459.00	\$3,004,057.00
17	\$995,041.00	\$3,999,098.00
18	\$1,102,067.00	\$5,101,165.00
19	\$1,289,167.00	\$6,390,332.00
20	\$1,372,855.00	\$7,763,187.00
21	\$1,339,609.00	\$9,102,796.00
22	\$1,351,650.00	\$10,454,446.00
23	\$1,149,656.00	\$11,604,102.00
24	\$550,500.00	\$12,154,602.00
25	\$602,943.00	\$12,757,545.00
26	\$720,566.00	\$13,478,111.00
27	\$518,871.00	\$13,996,982.00
28	\$478,544.00	\$14,475,526.00
29	\$735,269.00	\$15,210,795.00
30	\$700,102.00	\$15,910,897.00
31	\$639,395.00	\$16,550,292.00
32	\$869,241.00	\$17,419,533.00
33	\$818,531.00	\$18,238,064.00
34	\$724,495.00	\$18,962,559.00
35	\$703,868.00	\$19,666,427.00
36	\$482,668.00	\$20,149,095.00
37	\$187,077.00	\$20,336,172.00

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
38	\$146,962.00	\$20,483,134.00
39	\$122,486.00	\$20,605,620.00
40	\$92,521.00	\$20,698,141.00
41	\$57,956.00	\$20,756,097.00
42	\$51,903.00	\$20,808,000.00

TOTALS

\$20,808,000.00

**EXHIBIT 5-7**

**MAXIMUM PAYMENT SCHEDULE – OPTION 7**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$967,219.00	\$967,219.00
14	\$977,353.00	\$1,944,572.00
15	\$1,205,873.00	\$3,150,445.00
16	\$1,274,939.00	\$4,425,384.00
17	\$1,465,831.00	\$5,891,215.00
18	\$1,623,493.00	\$7,514,708.00
19	\$1,899,117.00	\$9,413,825.00
20	\$2,022,401.00	\$11,436,226.00
21	\$1,973,425.00	\$13,409,651.00
22	\$1,991,161.00	\$15,400,812.00
23	\$1,693,599.00	\$17,094,411.00
24	\$810,961.00	\$17,905,372.00
25	\$888,217.00	\$18,793,589.00
26	\$1,061,491.00	\$19,855,080.00
27	\$764,368.00	\$20,619,448.00
28	\$704,961.00	\$21,324,409.00
29	\$1,083,151.00	\$22,407,560.00
30	\$1,031,345.00	\$23,438,905.00
31	\$941,915.00	\$24,380,820.00
32	\$1,280,510.00	\$25,661,330.00
33	\$1,205,806.00	\$26,867,136.00
34	\$1,067,279.00	\$27,934,415.00
35	\$1,036,893.00	\$28,971,308.00
36	\$711,036.00	\$29,682,344.00
37	\$275,589.00	\$29,957,933.00

Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
38	\$216,494.00	\$30,174,427.00
39	\$180,439.00	\$30,354,866.00
40	\$136,297.00	\$30,491,163.00
41	\$85,377.00	\$30,576,540.00
42	\$76,460.00	\$30,653,000.00

TOTALS

\$30,653,000.00

**EXHIBIT 5-8**

**MAXIMUM PAYMENT SCHEDULE – OPTION 8**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$2,059,232.00	\$2,059,232.00
14	\$2,080,809.00	\$4,140,041.00
15	\$2,567,333.00	\$6,707,374.00
16	\$2,714,376.00	\$9,421,750.00
17	\$3,120,790.00	\$12,542,540.00
18	\$3,456,457.00	\$15,998,997.00
19	\$4,043,267.00	\$20,042,264.00
20	\$4,305,743.00	\$24,348,007.00
21	\$4,201,472.00	\$28,549,479.00
22	\$4,239,230.00	\$32,788,709.00
23	\$3,605,714.00	\$36,394,423.00
24	\$1,726,556.00	\$38,120,979.00
25	\$1,891,037.00	\$40,012,016.00
26	\$2,259,942.00	\$42,271,958.00
27	\$1,627,358.00	\$43,899,316.00
28	\$1,500,879.00	\$45,400,195.00
29	\$2,306,055.00	\$47,706,250.00
30	\$2,195,759.00	\$49,902,009.00
31	\$2,005,361.00	\$51,907,370.00
32	\$2,726,237.00	\$54,633,607.00
33	\$2,567,192.00	\$57,200,799.00
34	\$2,272,263.00	\$59,473,062.00
35	\$2,207,572.00	\$61,680,634.00
36	\$1,513,813.00	\$63,194,447.00
37	\$586,736.00	\$63,781,183.00

Months after NTP	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow
38	\$460,922.00	\$64,242,105.00
39	\$384,159.00	\$64,626,264.00
40	\$290,179.00	\$64,916,443.00
41	\$181,771.00	\$65,098,214.00
42	\$162,786.00	\$65,261,000.00

TOTALS

\$65,261,000.00

**EXHIBIT 5-9**

**MAXIMUM PAYMENT SCHEDULE – OPTION 9**

(all figures are in U.S. dollars)

<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
1	\$0.00	\$0.00
2	\$0.00	\$0.00
3	\$0.00	\$0.00
4	\$0.00	\$0.00
5	\$0.00	\$0.00
6	\$0.00	\$0.00
7	\$0.00	\$0.00
8	\$0.00	\$0.00
9	\$0.00	\$0.00
10	\$0.00	\$0.00
11	\$0.00	\$0.00
12	\$0.00	\$0.00
13	\$277,200.00	\$277,200.00
14	\$280,105.00	\$557,305.00
15	\$345,597.00	\$902,902.00
16	\$365,391.00	\$1,268,293.00
17	\$420,100.00	\$1,688,393.00
18	\$465,285.00	\$2,153,678.00
19	\$544,278.00	\$2,697,956.00
20	\$579,610.00	\$3,277,566.00
21	\$565,574.00	\$3,843,140.00
22	\$570,659.00	\$4,413,799.00
23	\$485,377.00	\$4,899,176.00
24	\$232,417.00	\$5,131,593.00
25	\$254,559.00	\$5,386,152.00
26	\$304,218.00	\$5,690,370.00
27	\$219,064.00	\$5,909,434.00
28	\$202,038.00	\$6,111,472.00
29	\$310,426.00	\$6,421,898.00
30	\$295,578.00	\$6,717,476.00
31	\$269,948.00	\$6,987,424.00
32	\$366,988.00	\$7,354,412.00
33	\$345,578.00	\$7,699,990.00
34	\$305,877.00	\$8,005,867.00
35	\$297,169.00	\$8,303,036.00
36	\$203,779.00	\$8,506,815.00
37	\$78,982.00	\$8,585,797.00



<b>Months after NTP</b>	<b>(A) Anticipated Draw / Cash Flow</b>	<b>(B) Cumulative Draw / Cash Flow</b>
38	\$62,046.00	\$8,647,843.00
39	\$51,713.00	\$8,699,556.00
40	\$39,062.00	\$8,738,618.00
41	\$24,469.00	\$8,763,087.00
42	\$21,913.00	\$8,785,000.00

TOTALS

\$8,785,000.00

## EXHIBIT 6

### DBE SPECIAL PROVISIONS

### FOR NON-TRADITIONAL CONTRACTS

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### **Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts**

**Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal for this Agreement is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this Agreement. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this Agreement.

#### **Article A. Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts**

**1. Policy.** In the performance of this Agreement the Developer shall comply with 49 CFR Part 26, the Department's DBE Program, and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended. For a conflict between the language of this Special Provision and 49 CFR Part 26, the Department's DBE Program, or 43 Texas Administration Code, Chapter 9, Sections 9.200 – 9.242, as amended, 49 CFR Part 26, the Department's DBE Program, or 43 TAC, Chapter 9, Sections 9.200 – 9.242 as applicable, shall control.

- a.** Developer, its Contractor and subcontractors must meet the DBE goal set out in the Agreement by obtaining commitments from eligible DBEs or the Developer must show acceptable evidence of Good Faith Efforts to meet the DBE goal.
- b.** The Developer shall solicit DBEs through reasonable and available means.
- c.** The Developer, 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 Developer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Developer to carry out these requirements is a material breach of this Agreement, that may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.

d. The Developer will include this Special Provision in all Contracts entered into by the Developer. The Developer will also require any Contractor to include this Special Provision in any Contract that the Contractor enters into under this Agreement.

e. By signing this Agreement the Developer certifies that the DBE goal as stated in the Agreement will be met by obtaining commitments from eligible DBEs or that the Developer will provide acceptable evidence of good faith effort to meet the commitment within the time frame set out below.

**2. Definitions.** The definition for terms used in this Provision can be found in Exhibit 1 of this Agreement, 49 CFR, Part 26 or 43 TAC §9.202, Definitions. Terms not defined in Exhibit 1 of this Agreement, 49 CFR, Part 26, or 43 TAC §9.202 will for the purpose of this Special Provision be defined by the term's common usage.

**3. Developer's Responsibilities.** These requirements must be satisfied by the Developer. Failure of the Developer to meet these requirements may result in the issuance of Sanctions by the Department.

a. The Developer shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Agreement, including Developer's exercise of good faith efforts. The selected Developer's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Agreement. Each DBE Performance Plan must at a minimum include the following: specific categories of services and work anticipated for DBE participation on the project; schedule for submission of DBE commitment agreements based on Developer's initial project schedule; good faith efforts performed to date; good faith efforts that will be exercised by the Developer following execution of the Agreement to achieve the DBE participation goal for the project; and the name, qualifications, responsibilities and contact information for the DBE liaison officer. The Developer shall also submit the completed Non-Traditional Contract form for the applicable type of commitment for each DBE that will be used to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of this Agreement. The DBE Performance Plan is subject to review, comment and approval by the Department prior to and as a condition of execution of the Agreement.

b. Should the Developer to whom the Agreement is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

c. The Developer shall designate a DBE liaison officer who will administer the Developer's DBE program and who will be responsible for all aspects of the Developer's DBE program including maintaining all records and all reporting and correspondence with the Department on DBE issues.

d. A Developer who cannot meet the Agreement goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

e. The Developer and Contractors shall not terminate a DBE without written consent of the Department. The Developer must comply with 49 CFR §26 and 43 TAC §9.229, DBE Substitution and Termination, prior to terminating or substituting a DBE. This includes written notification to the DBE and the Department and providing the DBE five days in which to respond to the Developer's or Contractor's reasons for the termination. The Department will not consent to the termination or substitution if the Developer or Contractor cannot demonstrate that the provisions of 49 CFR §26.53 and 43 TAC §9.229, DBE Substitutions and Terminations, have been followed. Terminating a DBE without Department approval is a violation of this Special Provision and can lead to Sanctions.

f. If the Department approves the termination of the DBE Contractor, the Developer or Contractor shall make a good faith effort to replace the terminated DBE Contractor with another DBE, to the extent needed to meet the Agreement goal. The Developer shall submit the applicable Non-Traditional Contract commitment form for the substitute DBE firm(s). The Developer may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

#### **4. Eligibility of DBEs.**

a. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's OCR Office. An update of the Directory can be found on the Internet at <http://www.txdot.gov>.

b. Only DBE firms certified at the time the commitments are submitted are eligible to be included in the information furnished by the Developer as required under this Special Provision.

c. For purposes of the DBE goal on this project, DBEs are only allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a Contract or subcontract are eligible for DBE goal participation.

#### **5. Determination of DBE Participation.**

When a DBE participates in a Contract, only the values of the work actually performed by the DBE, as detailed in 49 CFR §26.55, 43 TAC §9.231, Computing Work Performed by a DBE, 43 TAC §9.232, Commercially Useful Function, 43 TAC §9.233, Commercially Useful Function by DBE Trucking Firm, and 43 TAC §9.234, Counting Materials or Supplies Provided by DBE

Manufacturer or Regular Dealer, shall be counted by the Developer toward the DBE goal.

**6. Records and Reports.**

**a.** The Developer shall submit monthly reports, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of each calendar month. These reports will be required until all DBE Contracting or material supply activity is completed.

**b.** The Developer shall submit a final summary report of DBE payments upon completion of the project. The Developer will not receive final payment until this final report has been received and approved by the Department. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts must be submitted.

**c.** The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

**d.** Negative reports are required when no activity has occurred in a monthly period.

**e.** The Developer shall provide copies of Contracts or agreements and other documentation upon request.

**f.** The Developer must provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 must be submitted each month and the month following the month when final acceptance occurred at the end of the project.

**g.** A copy of all reports submitted to the department and all supporting documentation must be retained for a period of 3 years following completion of the Contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT.

**7. Compliance of Developer.**

**a.** To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Developer's efforts to involve DBEs during the performance of this Agreement. This will be accomplished by a review of monthly reports submitted to the Department by the Developer indicating the Developer's progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

**b.** The Developer shall receive credit toward the DBE goal based on actual payments to the DBE Contractor. The Developer shall notify the Department if

the Developer withholds or reduces payment to any DBE Contractor. The Developer shall submit an affidavit detailing the DBE Contract payments prior to receiving final payment for this Agreement.

c. The Developer's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Agreement. In such a case, the Department reserves the right to terminate this Agreement or seek sanctions under 43 TAC §9.237, Determination of Noncompliance; Sanctions.

**B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for Contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this Contract as follows:

1. The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for Contracts and Subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported to the Department each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."

2. 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.

**EXHIBIT 7**

**DEVELOPER'S DBE PERFORMANCE PLAN**

The following is submitted as a Disadvantage Business Enterprise (DBE) Plan to address the applicable requirements in TxDot's DBE Program for the IH 35E Managed Lanes Project:

**1. Goals**

The following percentage goal below is to reflect the AGL Constructor's (AGL) good faith effort to employ DBE firms for the IH 35E Managed Lanes Project. AGL will only use Certified DBE's performing a commercially useful function to count towards the 6% project goal.

- i. Based on the initial conditional award amount, AGL has not only committed to meet the DBE goal of 6%, but to exceed it. DBE subcontractors will perform the following scopes of work:

IDENTIFIED SCOPES OF WORK	DOLLAR VALUE	% OF WORK
Erosion Control	\$500,000	0.06%
Concrete Flatwork	\$4,000,000	0.47%
Hazardous Material Mitigation or Removal	\$2,000,000	0.24%
Landscaping and Irrigation	\$2,500,000	0.29%
Pavement Markings	\$5,000,000	0.59%
Rebar Installation	\$4,000,000	0.47%
Trucking	\$12,000,000	1.41%
Design Engineering	\$10,000,000	1.18%
QA Inspection and Testing	\$11,000,000	1.30%

*(Total % of Work = 6.01%)*

- ii. AGL has identified the following additional scopes of work that could be performed by DBE firms:

ADDITIONAL SCOPES OF WORK	DOLLAR VALUE	% OF WORK
Miscellaneous Wall Construction	\$250,000	0.03%
Concrete Placement	\$3,000,000	0.35%
Equipment Maintenance	\$1,000,000	0.12%
Traffic Control	\$10,000,000	1.18%
Franchise Utility Relocation	\$20,000,000	2.36%
Storm Drainage Inlets	\$5,000,000	0.59%

Barrier Rail Installation	\$6,000,000	0.71%
Sound Wall Installation	\$2,000,000	0.24%
Landscape Pavers Installation	\$40,000	0.005%

*(Total % of Work = 5.585%)*

AGL will identify DBE firms for the aforementioned and additional scopes as the project advances and submit on the TxDot Disadvantage Business Enterprise (DBE) Program Commitment Form. The Commitments Forms for the DBE Forms that AGL used to exceed the DBE Goal will be provided to TxDot no later than 45 Days after NTP1. As shown in the above tables, AGL intends on not only meeting the 6% DBE Goal but exceeding it.

AGL failed to illustrate in our Proposal schedule the timeline for submission of the DBE Commitments to TxDot. AGL's Preliminary Project Baseline Schedule (PBS-1) will include a commitment to provide the DBE Commitment forms no later than 45 days after NTP1.

## 2. Sources for Solicitation

The following sources have been identified by AGL as available resources to locate and solicit appropriate disadvantage business enterprises and will be utilized as needed:

- i. Community outreach meetings
- ii. Owner provided subcontractor listings
- iii. Texas Unified Certification Program (TUCP) Directory
- iv. AGL's Internal Vendor database, pre-qualification documents, and DBE organizations.
- v. Databases
  - Black Contractors Association
  - Dallas Black Chamber of Commerce
  - Dallas Urban League
  - Conference of Minority Transportation Officials
  - Hispanic Contractors Association
  - Greater Dallas Hispanic Chamber of Commerce
  - Asian Contractors Association
  - Asian Chamber of Commerce
  - Dallas/Fort Worth Minority Business Council
  - Women's Transportation Seminar
  - Women's Business Council

## 3. Best Value Selection

All subcontractors considered for Invitations to Bid by AGL, including DBEs, may be asked to complete a Prequalification Form. This form is reviewed internally by AGL to evaluate the following areas:

- Quality of Services



- Pricing Structure
- Delivery Schedule
- Financial Stability
- Safety Record
- Insurance/Bonding Information
- Experience
- Personnel
- Equipment

Additional information, if required, may be obtained from Dun and Bradstreet reports, personal interview, and contract with business references.

The best value subcontractor quotes are evaluated based on price qualifications of bid, inclusions/exclusions, prequalification information, etc. After best value consideration, with input from the project management team, AGL will make a selection of the successful subcontractors for each scope of work to be subcontracted. Appropriate agreements will be drafted and forwarded to the subcontractor for execution. If a DBE is not selected, the reasons for this decision will be documented.

#### 4. Invitation to Bid

Following the identification and prequalification of a potential subcontractor, an Invitation to Bid is formulated and issued to the subcontractors. A log is maintained to track the subcontractors contacted and their response. Sample subcontract, material contract and/or purchase orders agreements are included with the Invitation as a resource document for the subcontractor's information and pricing consideration. All plans and specifications are made available for review and additional contract documents may also be transmitted to the subcontractor.

#### 5. Plan Administration

The following individual will administer the DBE Performance Plan:

**Name:** David Thiel, DBE Coordinator

**Phone:** (214) 585-8644

**Email:** [dthiel@walshgroup.com](mailto:dthiel@walshgroup.com)

The specific duties, as they relate to this DBE Performance Plan, include oversight of the subcontracting program, and the development, assist in the preparation and execution of individual subcontracting plans, documentation and monitoring of performance relative to the contractual subcontracting requirements contained in this plan including, but not limited to:

- Preparing and submitting periodic governmental required subcontracting reports including a monthly DBE plan assessment report
- Coordinating activities during compliance reviews
- Coordinating activities involving DBE firms
- Monitoring attainment of proposed goals

## 6. Outreach Efforts

Local business outreach will be targeted to the local community to ensure that all interested DBE subcontractors are made aware of project opportunities and how to pursue those opportunities. AGL is aware that the DBE community is well established and includes a large number of businesses in a variety of work categories. Individual business contacts from various subcontractor lists will be included in our outreach efforts; however, such lists are not the most effective means of disseminating information quickly and fully into the DBE community. Communication with the DBE community is an important component to making the DBE performance plan a success. AGL must constantly have a pulse on the DBE community to have a thorough understanding of their expectations and ensure we are maximizing our outreach efforts. It is important that we exceed the DBE goal, but more importantly we exercise every opportunity to include DBE firms on this project by utilizing the following steps:

- i. Assemble presentation materials (Power Point presentation) that most effectively provide project information, i.e., project scope, schedules, project access, contract opportunities, project requirements, contact names, etc. to be used for presentation meetings with the DBE organizations.
- ii. Identify, develop and maintain a current listing of the leading DBE "networking" organizations working within the area.
- iii. Partner with DBE "networking" organizations to participate actively in AGL's Communication Network so that their members have a direct channel to receive notices of opportunity.
- iv. Review the DBE organization activity schedules so as to identify opportunities and/or the organizations' requests for AGL's outreach team to meet with their membership to review project opportunities.
- v. Establish a schedule for regular update meetings/communications with DBE "networking" organizations.
- vi. Establish a process for regular, updates from DBE networking organizations concerning AGL's project activities and/or information they have provided to their membership.
- vii. Maximize participation in relevant community workshops, networking events, contractor/vendor/supplier expos, etc.
- viii. Establish formal protocols with the organizations regarding AGL's access to their membership database so as to advertise for potential project contract opportunities timely, as they become available.
- ix. Provide automatic updates via the Project Web Site concerning current project information and subcontractor/supplier opportunities.
- x. Develop and update a monthly calendar of events for all DBE commercial networking organizations in the area to identify opportunities for AGL to solicit DBE subcontractor's participation on the project.
- xi. Demonstrate Good Faith Efforts to the DBE business community, elected officials, and DBE advocacy organizations.

The identification of qualified, local DBE subcontractors is ongoing, and will continue over the project's duration. Once DBE firms are identified they are added to the DBE Subcontractor list which is used as the basis for notifying firms of specific opportunities. AGL community outreach efforts will be centered on building a communication network that utilizes existing lines of communication through the involvement of established DBE organizations as previously stated.

## **7. Compliance with Reporting Requirements**

AGL agrees to submit monthly reports and cooperate in any studies or survey, as may be required by TxDOT, in order to determine the extent of the compliance by TxDOT to achieve the goal of the DBE plan. AGL agrees to submit all applicable Standard Forms, SMS 4901, SMS 4901-M/S, SMS 4901-T, SMS 4903 and SMS 4904, modified to fit the CDA. To ensure that DBE requirements are compliant, AGL will submit monthly reports to TxDOT indicating progress in achieving the DBE contract goals.

A contract compliance program will be implemented to ensure all contractors are complying with the DBE Plan guidelines. The DBE Program Coordinator will conduct the following contract compliance activities:

1. Review monthly DBE reports submitted by contractors
2. Provide assistance to interested firms in obtaining their DBE certification through the Texas Unified Certification Program (TUCP)
3. Request copies of all DBE certifications and verify certifications are valid and current
4. Review contractors' DBE utilization reports and ensure the DBE certifications match the scope of work
5. Conduct project site visits to ensure DBE firms are performing the scope of work listed on the DBE participation reports
6. Conduct regular meetings with DBE firms on the project to discuss their contract, performance or any issues that they may have

## **8. Records**

AGL agrees to maintain the following types of record document compliance with the DBE Plan:

- i. Small, small disadvantaged, women-owned, and business concerns source lists, guides, and other data identify these supplies, subcontract, etc.
- ii. Organizations contacted for providing Small, small disadvantaged, women-owned, and business sources
- iii. Records on each subcontract solicitation resulting in an award showing whether or not small and small disadvantaged business concerns were contracted, and if not, why not; whether or not small, small disadvantaged, women-owned, and business concerns were contacted, and if not, why not; and, if applicable the reason the award was not made to a small or small disadvantaged business concern

- iv. Records of any outreach efforts to contact trade associations, business development, business development organizations, and conference and trade fairs, to locate DBEs
- v. Records of internal guidance and encouragement provided to buyers through workshops, seminars, training, etc., and performance monitoring to evaluate compliance with program requirements.
- vi. Records on a contract-by-contract basis to support award data submitted by the offeror to the including name, address, and business size of each subcontractor.

**Program Reporting and Records:** The DBE Program Coordinator will develop reports that monitor and track the utilization of DBE firms on the project. The reporting activities include the following:

1. Create a Comprehensive Monthly DBE Plan Report summarizing all program activities and the progress of the DBE participation on the project. Reports to be submitted 15 days after the end of the calendar month.
2. Complete and submit all applicable standard forms required by TxDOT
3. Create a Final DBE Plan Report summarizing all the successes and final DBE participation to be submitted at the end of the project
4. Maintain records of each DBE firm participating on the project
5. Maintain records of documents and emails related to each solicitation
6. Maintain records of documents on a contract-by-contract basis
7. Maintain records of all documents and emails related to development, implementation and execution of each aspect of the DBE Plan

## 9. EEO

All Federal employment requirements to include EEO, affirmative action, labor, and all other applicable requirements will be posted at the project site and reference to the requirements attached to all subcontract agreements. All subcontract agreements will incorporate 49 CFR Part 26 verbatim.

## 10. Implementation

In order to effectively implement this plan to the extent consistent with efficient contract performance, AGL shall perform the following functions:

- A. Assist disadvantaged businesses by allowing time for the preparing of bids, quantities, specifications and delivery schedules. Where the lists of potential DBE subcontracts are excessively long, reasonable effort shall be made to give all such business concerns an opportunity to compete over a period of time.
- B. Discuss subcontracting opportunities with representations of DBE's.
- C. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as DBE's for the purpose of obtaining a subcontract.