

Central 70 Project: Project Agreement
Schedule 15 (Federal and State Requirements)

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Schedule 15**Federal and State Requirements****1. GENERAL REQUIREMENTS****1.1. Civil Rights Program Manager**

1.1.1. The Developer shall retain a full-time Civil Rights Program Manager (“CRPM”) who shall be responsible for the day-to-day operational components of, and serve as the primary contact to the Department for, all matters and requirements concerning:

- a. Davis-Bacon and related Acts (contained in Section 2.1 of this Schedule 15);
- b. equal employment opportunity (contained in Section 2.2 of this Schedule 15);
- c. Title VI of the Civil Rights Act (contained in Section 2.3 of this Schedule 15);
- d. Americans with Disabilities Act (contained in Section 2.4 of this Schedule 15);
- e. compliance with certain Federal Law requirements relating to the matters set out in Parts I through V of Appendix H to this Schedule 15 (contained in Section 2.5 of this Schedule 15);
- f. small business participation and workforce development (contained in Sections 5 and 6 of this Schedule 15); and
- g. community development programs (contained in Section 7 of this Schedule 15) (together, the “Civil Rights Requirements”).

1.1.2. The CRPM shall have at least three years’ professional experience working on transportation-related construction projects and knowledge of small business and workforce applicable regulations and best practices to ensure compliance with all the Civil Rights Requirements.

1.1.3. The CRPM position shall be filled prior to issuance of NTP1, and remain filled through the duration of the Construction Period. The appointment of the CRPM, and any replacement thereof, shall be subject to the Department’s Acceptance. Prior to Substantial Completion, the Developer shall identify the individual/position responsible for compliance with the Civil Rights Requirements for the Operating Period and keep the Department apprised of any changes during the remainder of the Term.

1.2. Meetings and Reporting**1.2.1. Construction Period Monthly Meeting Requirement**

The Developer, through its CRPM, shall host monthly meetings with the Department during the Construction Period at such times and locations as are reasonably convenient to the Department. The purpose of such meetings shall be to discuss all matters concerning the Civil Rights Requirements. The Developer and the Department shall jointly set the agenda for each meeting and the Department may request the presence of specific Persons participating on the Project, as necessary.

1.2.2. Construction Period Monthly Reporting Requirements

As part of its monthly Progress Report submissions made during the Construction Period pursuant to Section 4.1 of Schedule 8 (*Project Administration*), the Developer shall submit to the Department for Acceptance all reports referenced in this Schedule 15 as applicable during the Construction Period, including as necessary to comply with the Construction Period small business participation reporting requirements contained in Appendix A to this Schedule 15, the Construction Period workforce development program reporting requirements contained in Appendix B to this Schedule 15 and the Davis-Bacon reporting requirements contained in Section 2.1.3 of this Schedule 15.

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1.2.3. Construction Period Semi-Annual Self-Assessment

No later than each anniversary of the commencement of each Contract Year and of the date that is six months thereafter in each Contract Year during the Construction Period, the Developer shall submit to the Department:

- a. for Approval, an assessment of its progress toward achieving the Construction Work Small Business Goals described in Section 6.1 of this Schedule 15; and
- b. for Acceptance, an assessment of its progress toward achieving the Workforce Development Goals applicable during the Construction Period.

Additional requirements for such self-assessments are contained in Appendices A and B to this Schedule 15.

1.2.4. Construction Period Annual Progress Review

During the Construction Period the Developer shall participate in an annual review (on a Contract Year basis) of its progress toward achieving the Small Business and Workforce Development Goals applicable during the Construction Period. Additional requirements for such reviews are contained in Appendices A and B to this Schedule 15. Such review shall also consider the Developer's compliance with its obligations under Section 7 of this Schedule 15.

1.2.5. Operating Period Monthly Reporting Requirement

As part of its monthly Progress Report submissions made during the Operating Period pursuant to Section 4.1 of Schedule 8 (*Project Administration*), the Developer shall submit all reports referenced in this Schedule 15 as applicable during the Operating Period, including as necessary to comply with the Operating Period reporting requirements contained in Appendix C to this Schedule 15 and the Davis-Bacon reporting requirements contained in Section 2.1.3 of this Schedule 15.

1.2.6. Operating Period Annual Progress Review

During the Operating Period the Developer shall participate in an annual review (on a Contract Year basis) of its progress toward achieving the Small Business and Workforce Development Goals applicable during the Operating Period. Additional requirements for such reviews are contained in Appendix C to this Schedule 15. Such review shall also consider the Developer's compliance with its obligations under Section 7 of this Schedule 15.

1.2.7. Web-based compliance system

During both the Construction Period and the Operating Period, the Developer shall use B2Gnow and LCPTracker, the Enterprises' web-based certified payroll and contractor compliance system, to submit Deliverables required by this Schedule 15 and to report payments to Subcontractors so as to document compliance with Section 17.5 of the Project Agreement. For any required Deliverable that is not supported by the Enterprise's B2Gnow or LCPTracker software, the applicable Deliverable shall be submitted to the Enterprises in a form mutually agreed between the Parties (both acting reasonably).

1.3. Deductions**1.3.1. Construction Period****Failure to Achieve Construction Work Small Business Goals**

- a. The failure by the Developer both (a) to achieve any Construction Work Small Business Goal as of the Substantial Completion Date and (b) to have made good faith efforts (as determined by reference to Part II of Appendix A to this Schedule 15) to achieve such goal shall result in a payment deduction pursuant to Schedule 6 (*Performance Mechanism*). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number) and be calculated in accordance with Sections 2 and 3 of Part II of Appendix A to this Schedule 15:

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(Relevant Construction Work Small Business Goal Percentage – Actual Percentage of Relevant Participation Achieved) x (Total Dollar Value of, as applicable to the relevant goal, all (i) Design Services or (ii) Other Construction Work or (iii) Other Construction Work and Routine O&M Work) = Amount of deduction to be assessed.

Failure to Achieve Construction Period OJT Goal

- b. The failure by the Developer to achieve the Construction Period OJT Goal as of the Substantial Completion Date shall result in a payment deduction pursuant to Schedule 6 (Performance Mechanism). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number):

(Construction Period OJT Goal – Actual OJT Employment Hours on Other Construction Work during the Construction Period calculated in accordance with Section 1 of Part III of Appendix B to this Schedule 15) x \$28.50 = Amount of deduction to be assessed.

Re-evaluations of Failures to Achieve Construction Work Small Business Goals and Construction Period OJT Goal

- c. Any failure to achieve any Construction Work Small Business Goal or the Construction Period OJT Goal as of the Substantial Completion Date which failure resulted in a deduction as determined pursuant to, as applicable, Section 1.3.1a or 1.3.1b of this Schedule 15, is subject to re-evaluation after (i) Approval by the Department in accordance with Section 8 of Part III of Appendix A to this Schedule 15 or Section 7 of Part IV of Appendix B to this Schedule 15 of, as applicable, the Construction Period Small and Disadvantaged Business Final Report or the Construction Period Workforce Development Final Report submitted by the Developer prior to the Final Acceptance Date and (ii) the issuance of the Department's report pursuant to the relevant such Section.

Following such re-evaluation (to be made with respect to compliance as of the Final Acceptance Date, and not as of the Substantial Completion Date), the Enterprises shall recalculate any deductions previously made pursuant to Sections 1.3.1a and 1.3.1b (such recalculations to be made by reference to the Final Acceptance Date). If such recalculations result in a lower deduction relative to the relevant deduction previously made pursuant to Section 1.3.1a or Section 1.3.1b of this Schedule 15, the Developer shall be entitled to include the differential in the next Payment Request that it submits to the Enterprises as an amount payable to the Developer by the Enterprises.

1.3.2. Operating Period

Failure to Achieve Routine O&M Work ESB Goal

- a. The failure by the Developer both (a) to have achieved the Routine O&M Work ESB Goal, as of the last date in any five Contract Year period in respect of which the Routine O&M Work ESB Goal is assessed pursuant to Section 6.2.2 of this Schedule 15, and (b) to have made good faith efforts to achieve such goal shall result in a payment deduction pursuant to Schedule 6 (Performance Mechanism). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number):

Routine O&M Work ESB Goal – Value of Routine O&M ESB Work calculated in accordance with Section 3.b of Part I of Appendix C to this Schedule 15 = Amount of deduction to be assessed.

Failure to Achieve Renewal Work DBE Goal

- b. The failure by the Developer both (a) to have achieved the Renewal Work DBE Goal, as of the last date in any five Contract Year period in respect of which the Renewal Work DBE Goal is assessed pursuant to Section 6.2.2 of this Schedule 15, and (b) to have made good faith efforts to achieve such goal shall result in a payment deduction pursuant to Schedule 6 (Performance Mechanism). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number)

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Renewal Work DBE Goal – Value of Renewal Work calculated in accordance with Section 3.b of Part II of Appendix C to this Schedule 15 = Amount of deduction to be assessed.

Failure to Achieve Renewal Work OJT Goal

- c. The failure by the Developer to achieve the Renewal Work OJT Goal in respect of any Contract Year shall result in a payment deduction pursuant to Schedule 6 (Performance Mechanism). The deduction shall be determined as follows (with the result to be rounded to the nearest whole number):

(Renewal Work OJT Goal – Actual OJT Employment Hours on Renewal Work during applicable Contract Year calculated in accordance with Section 2 of Part III of Appendix C to this Schedule 15) x ((the then-current Davis-Bacon Minimum Wage (Basic Hourly Wage + Fringe Benefit) for a “Power Equipment Operator, Backhoe/Loader combination” in Denver County))

2. LABOR, EQUAL EMPLOYMENT OPPORTUNITY AND NON-DISCRIMINATION

2.1. Davis-Bacon and Related Acts (DBRA) Compliance

2.1.1. Application to all Construction, Alteration and Repairs

The Davis-Bacon and Related Acts (40 USC §276a; 29 CFR Parts 1, 3, 5, 6 and 7) (the “DBRA”) apply to the Developer and Subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. The Developer shall ensure that the requirements of the DBRA, to the extent applicable to the Work being performed, are implemented on all Subcontracts throughout the Term.

2.1.2. Wage Rates

The minimum wage rates to be used for purposes of compliance with Section 2.1.1 of this Schedule 15 throughout the Construction Period are established by the U.S. Department of Labor. Current rates are attached as Appendix D to this Schedule 15.

The minimum wage rates to be used for purposes of compliance with Section 2.1.1 of this Schedule 15 throughout the Operating Period will be established by the U.S. Department of Labor. Such yearly updated minimum wage rates shall be notified to the Developer at least 60 Calendar Days prior to the commencement of each Contract Year during the Operating Period. The first such notification shall be made prior to the Substantial Completion Date and shall apply to the Contract Year during which the Substantial Completion Date occurs.

2.1.3. Compliance and Reporting

The Developer shall ensure that all employees performing work subject to DBRA classifications and rates working during the Term receive the minimum compensation required in accordance with DBRA and other Law. The Developer shall provide weekly certified payrolls to the Department throughout the Term for all activities subject to DBRA. The Developer shall, and shall ensure that each of its Subcontractors and each of their respective Subcontractors shall, pursuant to Section 19 of the Project Agreement, maintain and make available for review, inspection and audit by the Department all such Project Records as are necessary to document compliance with DBRA and other law. During the Construction Period, the CRPM shall be the person responsible for reporting this data to the Department.

2.2. Equal Employment Opportunity

2.2.1. Executive Order 11246

The Developer shall, and shall ensure that all Subcontractors shall, comply with all Laws that prohibit certain employment practices. In furtherance of this and in accordance with Executive Order 11246 and Appendix E to this Schedule 15, the Developer shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual

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orientation, gender identity, or national origin. The provisions contained in Appendix E to this Schedule 15 shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.2.2. Affirmative Action

The Developer shall take affirmative action to ensure that applicants for employment and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. The Developer shall, and shall ensure that all Subcontractors shall, comply with CDOT's Standard Special Provision "Affirmative Action Requirements Equal Employment Opportunity" (attached as Appendix F to this Schedule 15). Appendix F shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.3. Title VI of the Civil Rights Act and Related Statutes

2.3.1. Non-Discrimination Provisions

Pursuant to Title VI of the Civil Rights Act of 1964 and related statutes, the Developer shall not, and shall ensure that none of the Subcontractors shall, exclude from participation in the Work, deny the benefits of, or subject to discrimination, any person in the United States on the ground of race, color, national origin, sex, age or disability. The Developer shall, and shall ensure that all Subcontractors shall, comply with all applicable Federal and State nondiscrimination Law and with the required terms of USDOT Order No. 1050.2A "USDOT Standard Title VI/Non-Discrimination Assurances, which are set out in Appendix G to this Schedule 15. The Developer shall include the clauses contained in Parts I through IV of Appendix G in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

2.3.2. Notice and Complaints

The Developer shall, and shall ensure that all Subcontractors shall, report all complaints alleging discrimination on the grounds of race, color, national origin, sex, age or disability to the Department. In all facilities open to the public and on any websites (or equivalent digital media) maintained by the Developer for the Project, the Developer shall post and make available to the public CDOT's non-discrimination notice and complaint procedures.

2.4. Americans with Disabilities Act

Pursuant to Federal regulations promulgated under the authority of the Americans with Disabilities Act, 28 CFR § 35.101 et seq., the Developer, and each of its Subcontractors and each of their Subcontractors, understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, the Developer agrees to comply with the "General Prohibitions Against Discrimination," 28 CFR § 35.130, and all other regulations promulgated under Title II of the Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by CDOT through contracts with outside contractors.

2.5. Required Federal Provisions, Federal-Aid Construction Contracts, for FHWA 1273

2.5.1. Applicability

As the Construction Work and Renewal Work will be financed in whole or in part with Federal funds, all 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. In accordance with Section 1 of The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273" ("FHWA 1273") attached as Appendix H to this Schedule 15, FHWA 1273 applies to, and shall be included in, this Agreement and (subject to Section 2.5.3 of this Schedule 15) all Subcontracts under which any part of the Construction Work or the Renewal Work is performed, excluding those Subcontracts that are purchase orders, rental agreements or other agreements for supplies or services (other than design services). FHWA 1273 applies to,

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and shall be incorporated by reference in any contract, for work done under any purchase order, rental agreement, or agreement for other services.

2.5.2. Definitions

For purposes of Appendix H to this Schedule 15 the following terms or phrases in FHWA 1273 shall have the respective meanings set out below:

- a. "Department contracting officer", "Department resident engineer", or "authorized representative of the Department" shall mean the Department or its authorized representative;
- b. "contractor", "prime contractor", "bidder" or "prospective primary participant" shall mean the Developer or its authorized representative and/or the Construction Contractor or its authorized representative and/or the O&M Contractor or its authorized representative, as may be appropriate under the circumstances;
- c. "contract" or "prime contract" shall mean the Construction Contract or any other Subcontract as may be appropriate under the circumstances (including any Subcontract for Renewal Work);
- d. "subcontractor", "supplier", "vendor", "prospective lower tier participant" or "lower tier subcontractor" shall mean, as appropriate, contractors other than the Construction Contractor or any other Subcontractor as may be appropriate under the circumstances (including any Subcontractor performing Renewal Work); and
- e. "department", "agency" or "department or agency entering into this transaction" shall mean the Department, except where a different department or agency is specified.

2.5.3. Sections Applying to the Construction Contractor

Sections VI.1 and VI.2 of FHWA Form 1273 shall apply only to the Construction Contractor.

2.5.4. Compliance Reviews

The Department will periodically conduct compliance reviews to ensure that the Developer and all Subcontractors are complying with the requirements of FHWA 1273. The Developer shall, and shall ensure that Subcontractors, remedy any noncompliance with the requirements of FHWA 1273 in a timely manner, whether or not such noncompliance is first identified by the Department.

3. COMPLIANCE WITH FHWA BUY AMERICA REQUIREMENT

3.1. General Requirement

The Developer shall, and shall cause each Subcontractor (as applicable), to comply with the FHWA Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in this 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 aggregate value of the Construction Work to be performed under the Construction Contract.

3.2. Additional Documentation Requirements

Additional Buy America documentation requirements are contained in Section 6.4.3.b.iv of Schedule 8 (Project Administration). Developer shall require each Subcontractor providing steel and iron material to the Project to complete and submit to Developer all certificates required for Developer to comply with its obligations under Section 6.4.3.b.iv of Schedule 8 (Project Administration).

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4. GENERAL FEDERAL REQUIREMENTS

4.1. Non-Collusion

The provisions in this Section 4.1 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 FHWA of this Agreement that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom this Agreement would 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 was included in the Proposal.

4.2. Convict Produced Materials

FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials. 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. The Developer and each Subcontractor shall comply with such requirements and the Developer agrees to include this Section 4.2 in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

4.3. Access to Records and Record Retention

As required by 2 CFR Parts 200 and 1201, and without limiting the Developer's obligations under Section 19 of the Project Agreement, the 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 the Developer and such Subcontractors which are directly pertinent to any grantee, subgrantee or financing contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 2 CFR Parts 200 and 1201, the 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 (or, if applicable, for such longer period as is required pursuant to Sections 19.1.6 and 19.1.7 of the Project Agreement). The Developer agrees to include this Section 4.3 in each Subcontract, without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract.

5. SMALL BUSINESS PARTICIPATION AND WORKFORCE DEVELOPMENT

5.1. Required Plans

5.1.1. Construction Period: The Developer shall submit, and obtain Approval from the Department of, a Small and Disadvantaged Business Participation Plan (for purposes of this Schedule 15, the "SDBPP") and a Workforce Development Plan (for purposes of this Schedule 15, the "WDP") prior to the issuance of NTP1. Both plans shall be consistent with and expand upon the draft plans submitted with the Proposal. Requirements for the SDBPP are contained in Appendix A to this Schedule 15 and requirements for the WDP are contained in Appendix B to this Schedule 15.

5.1.2. Operating Period: Prior to the commencement of each consecutive five Contract Year period during the Operating Period, the Developer shall submit, and obtain Approval from the Department of, a plan for achieving the Routine O&M Work ESB Goal and the Renewal Work DBE Goal applicable to such period. The first such plan is required to be submitted and Approved prior to the Substantial Completion Date and shall apply to the Contract Year during which the

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Substantial Completion Date occurs and the immediately following four Contract Years. Requirements for these plans are contained in Appendix C to this Schedule 15.

5.2. Investigations

As it determines necessary, the Department may conduct reviews or investigations of participants in the Project to ensure Developer's compliance with its obligations under this Schedule 15 with respect to DBEs, ESBs, OJT and local hiring, including: the Developer; all Subcontractors; DBE and ESB firms and applicants for DBE and/or ESB certification that are not themselves Subcontractors; all OJT and local hire participants; and complainants. The Developer is required to (and shall ensure its Subcontractors and each of their Subcontractors) cooperate fully and promptly with compliance reviews, certification reviews, investigations and other requests for information, in any such case, by the Department in connection with Developer's compliance with this Section 5 and Section 6 of, and Appendices A, B and C to, Schedule 15.

5.3. Intimidation and retaliation

The Developer shall not (and shall ensure that its Subcontractors and each of their Subcontractors shall not) intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by CDOT's DBE, ESB or OJT programs or the Project's local hiring program, each as implemented for this Project pursuant to this Schedule 15, or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under any such program.

5.4. Assurance of Non-Discrimination

By entering into this Agreement, the Developer agrees to the following assurance (which for purposes of Developer Default number (29) in Section 32.1.1 of the Project Agreement shall constitute a material obligation) and shall include it in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to the provisions of such Subcontract:

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

5.5. OJT Program and Minimum Wages

The intent of the On-the-Job Training (OJT) program plan is to provide an innovative approach to train and upgrade females and minorities (as that term is defined in Section B.i.D. of Appendix F to this Schedule 15 in the journey worker status of the skilled crafts. Training opportunities may be provided with on-the-job trainees or duly registered apprentices.

The minimum wage rate for OJT program participants during the Construction Period is \$13.55 per hour, which is the equivalent to the minimum base wage rate listed for "Laborer Pipelayer" in Appendix D to this Schedule 15.

The minimum wage rates for OJT program participants during the Operating Period shall be established by the Department and notified to the Developer at least 60 Calendar Days prior to the commencement of each Contract Year during the Operating Period. The first such notification shall be made prior to the Substantial Completion Date and shall apply to the Contract Year during which the Substantial Completion Date occurs.

The Developer shall ensure that payment to all OJT program participants is not less than such minimum rates from time to time. In addition, trainees/apprentices working in the skilled crafts

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must be paid the Davis-Bacon wage decision full fringe benefit rate per hour for the classification of work required by the approved program in accordance with Appendix D to this Schedule 15.

6. SMALL BUSINESS AND WORKFORCE DEVELOPMENT GOALS

6.1. Summary of Goals

The following table summarizes the goals defined in greater detail in Sections 6.2 and 6.3 of, and Appendices A, B and C to, this Schedule 15 with respect to DBEs, ESBs, OJT and local hiring.

Collectively, the Construction Work Small Business Goals, the Operating Period Small Business Goals and the Workforce Development Goals (each as separately defined in Sections 6.2 and 6.3 of this Schedule 15) are referred to herein as the “Small Business and Workforce Goals”.

	Disadvantaged Business Enterprise	Emerging Small Business	On-the-Job-Training	Local Hiring
Construction Period				
Design Services	11.6%	3%	N/A	760,000 total employment hours with 380,000 employment hours performed by new hires
Other Construction Work	12.5%	3%	200,000 employment hours	
Routine O&M Work	N/A		N/A	
Operating Period				
Routine O&M Work	N/A	\$850,000 total (indexed) for each five Contract Year period	N/A	N/A
Renewal Work	% to be established for each five Contract Year period	N/A	Number of employment hours to be established for each Contract Year	N/A

6.2. Small Business Goals

6.2.1. Construction Period Goals

- a. As further outlined in Appendix A to this Schedule 15, the Developer shall make good faith efforts to achieve the DBE and ESB Construction Period goals set out in Section 6.1 of this Schedule 15: “DBE Design Goal” (11.6%); “ESB Design Goal” (3%); “DBE Construction Goal” (12.5%); and “ESB Construction Goal” (3%) (each as calculated pursuant to Section 2 of Part II of Appendix A to this Schedule 15) (collectively, the “Construction Work Small Business Goals”). Following consultation with the Developer, the Department may lower any of these goals at any time if it reasonably believes, upon evaluation of the DBE and ESB markets, that such goal is unachievable.
- b. The Developer shall also assist in the development of DBEs and ESBs as outlined in the Developer’s Approved SDBPP. The Developer shall ensure that during the Construction Period at least one of its (or its Subcontractors’) employees is responsible for working with

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small businesses and has three or more years of experience in small business outreach and capacity building.

6.2.2. Operating Period Goals

- a. During the Operating Period the Developer shall make good faith efforts to achieve the Routine O&M Work ESB Goal applicable to each five Contract Year period and the Renewal Work DBE Goal applicable to each five Contract Year period (collectively, the "Operating Period Small Business Goals") as set out below. Following consultation with the Developer, the Department may lower any of these goals at any time if it reasonably believes, upon evaluation of the DBE and ESB markets, that such goal is unachievable.

Routine O&M Work ESB Goal

- b. As further outlined in Appendix C to this Schedule 15, commencing with the Contract Year during which the Substantial Completion Date occurs, the Developer shall make good faith efforts to achieve \$850,000 total (indexed) of ESB participation in the Routine O&M Work (the "Routine O&M Work ESB Goal") during each sequential five Contract Year period during the Operating Period, with the first such period being the Contract Year during which the Substantial Completion Date occurs and the immediately following four Contract Years (provided that, if applicable, the amount of such goal shall be prorated for the first such period to account for the Substantial Completion Date occurring part way through a Contract Year).
- c. The Developer and the Department shall meet at agreed upon intervals, but no less than annually, to evaluate the Developer's progress toward achieving the then applicable Routine O&M Work ESB Goal (such meeting may be the annual progress review held pursuant to Section 6 of this Schedule 15).
- d. At the end of each five Contract Year period, the Department will evaluate whether the Developer has achieved the Routine O&M Work ESB Goal and its efforts to achieve such goal, in order to determine whether a payment deduction shall be made pursuant to Section 1.3.2.a of this Schedule 15. Whether or not the Developer has achieved the goal, the Developer shall submit for review by the Department documentation evidencing the good faith efforts that the Developer considers it has taken to achieve the goal.

Renewal Work DBE Goal

- e. As further outlined in Appendix C to this Schedule 15, commencing with the Contract Year during which the Substantial Completion Date occurs, the Developer shall make good faith efforts to achieve the Renewal Work DBE Goal (as defined in Section 6.2.2.f of this Schedule 15) during each sequential five Contract Year period during the Operating Period, with the first such period being the Contract Year during which the Substantial Completion Date occurs and the immediately following four Contract Years (provided that, if applicable, such goal for the first such period shall take into account that the first Contract Year in such period is not a full 12 month period if the Substantial Completion Date occurs part way through a Contract Year).
- f. Prior to the Substantial Completion Date, and thereafter prior to the end of each five Contract Year period referenced in Section 6.2.2.e of this Schedule 15, the Department shall notify the Developer of a goal for DBE participation on Renewal Work during each applicable period (the "Renewal Work DBE Goal"). The Department shall determine such goal based on a review of the Accepted Renewal Work Plan most recently submitted prior to the start of the first Contract Year in any such period (or, in the case of the first such period, prior to the Substantial Completion Date), together with any other relevant documentation.
- g. The Developer and the Department shall meet at agreed upon intervals, but no less than annually, to evaluate the Developer's progress toward achieving the then applicable Renewal Work DBE Goal (such meeting may be the annual progress review held pursuant to Section 1.2.6 of this Schedule 15).

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- h. At the end of each five Contract Year period, the Department will evaluate whether Developer has achieved the Renewal Work DBE Goal and its efforts to achieve such goal, in order to determine whether a payment deduction shall be made pursuant to Section 1.3.2.b of this Schedule 15. Whether or not the Developer has achieved the goal, the Developer shall submit for review by the Department documentation evidencing the good faith efforts that the Developer considers it has taken to achieve the goal.

6.3. Workforce Development Goals

The Developer is obligated to achieve the Local Hiring Goal, the Construction Period OJT Goal and the Renewal Work OJT Goals (collectively defined as the "Workforce Development Goals"), as further detailed in this Section 6.3.

6.3.1. Construction Period Goals On-the-Job Training Goal

- a. The Developer shall be obligated to achieve the OJT goal for the Construction Period set out in Section 6.1 of this Schedule 15 (the "Construction Period OJT Goal"), as calculated by reference to Other Construction Work comprised of skilled craft work and otherwise in accordance with Appendix B to this Schedule 15. Failure to achieve the Construction Period OJT Goal shall result in a payment deduction pursuant to Section 1.3.1.b of this Schedule 15.

Local Hiring Goal

- b. The local hiring goal for the Construction Period is 760,000 total contract employment hours with a minimum of 380,000 hours performed by new hires (the "Local Hiring Goal"), as calculated in accordance with Section 2 of Part III of Appendix B to this Schedule 15. For certainty, achievement of the Local Hiring Goal requires the Developer to have achieved both the total employment hours goal and the new hire employment hours goal. For the purposes of this Schedule 15, a new hire is any individual hired by their employer after the Agreement Date. Monetary incentives for achieving and exceeding the Local Hiring Goal are described in Section 2 of Part V of Appendix B of this Schedule 15. Local hires may be or have been participants in the OJT program.

6.3.2. Operating Period OJT Goals

The Developer shall be obligated to achieve the Renewal Work OJT Goal during each Contract Year period during the Operating Period, with the first such period being the Contract Year during which the Substantial Completion Date occurs (the "Renewal Work OJT Goal"), as calculated by reference to Renewal Work comprised of skilled craft work and otherwise in accordance with Appendix C to this Schedule 15. Failure to achieve the Renewal Work OJT Goal applicable to any Contract Year period shall result in a payment deduction pursuant to Section 1.3.2.c of this Schedule 15.

6.4. Assignment of Financial Deductions and Incentives to Subcontractors

Subject to the mandatory payment and dispute resolution provisions in Section 17.5 of the Project Agreement and Section 2.(b) of Part A of Schedule 16 (*Mandatory Terms*), the Developer may assign financial deductions and incentives associated with Small Business and Workforce Goals to Subcontractors pursuant to the terms of the relevant Subcontractor's Subcontract, provided that the Enterprises Accept the terms of such assignment and financial consequences prior to execution of the relevant Subcontract (provided that no such Acceptance is required with respect to any such assignment to a Principal Subcontractor). Any Developer request for the Enterprise's Acceptance shall include the relevant Subcontract terms and a description of how the Developer will monitor and assist the relevant Subcontractor's efforts at achieving the desired small business and/or workforce participation in connection with such assignment. Any such proposed assignment must also be proportionate to the amount and type of work to be provided by the relevant Subcontractor. Notwithstanding any assignment of financial deductions and incentives associated with Small Business and Workforce Goals being made, no such assignment

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(including, for certainty, an assignment to a Principal Subcontractor) shall relieve the Developer of its responsibility in meeting its Small Business and Workforce Goals outlined in Sections 6.2 and 6.3 of this Schedule 15.

7. COMMUNITY DEVELOPMENT PROGRAMS

7.1. Community Development Programs

In order to contribute to the community development needs of high need neighborhoods located along the Project area and otherwise create a positive relationship between local communities and the Developer, the Developer shall spend an aggregate amount of \$200,000 during the Construction Period and an additional aggregate amount of \$800,000 (and no less than \$25,000 per Calendar Year or as otherwise agreed by the Parties (acting reasonably)) during the Operating Period in order to:

- a. establish an organized program to assist businesses in taking advantage of the significant business opportunity provided by the local workforce during the Construction Period. This program shall include a commitment to work with restaurants, food vendors and catering businesses that are located within such neighborhoods and are likely to be impacted by the Construction Work. This program may include the following elements:
 - i. Business investment revolving loans and/or grant programs;
 - ii. Property access agreements for food carts and food trucks;
 - iii. Coupon programs;
 - iv. Advertisements; and/or
 - v. Partnerships with food-access non-profits;
- b. establish a college scholarship program that will benefit students enrolled during the Construction Period as students of good-standing at Swansea Elementary school. The scholarship program shall be designed for students who go on to successfully obtain a high school degree or equivalent, and who subsequently are accepted to and enroll in a two or four year associates or bachelors degree program. The Developer may partner with a foundation or other nonprofit in the management and allocation of such scholarships;
- c. in partnership with Swansea Elementary school, develop and/or fund a construction education curriculum for the school designed to impart math and engineering concepts relevant to the construction of the Project; and
- d. establish any other programs that it considers appropriate for the purposes of achieving the community development objective referred to above in relation to such neighborhoods.

7.2. Annual Report

The Developer shall submit, and obtain Acceptance from the Department of, a report (in a form to be agreed between the Parties, both acting reasonably) prior to NTP2, with subsequent reports to be submitted to the Department for Acceptance no later than 30 Calendar Days (1) before the end of each Contract Year that ends during the Construction Period, (2) after the Substantial Completion Date and (3) before the end of each Contract Year that ends during the Operating Period during which any of such programs remain active and, in each case, prior to the annual progress review conducted in respect of the relevant Contract Year pursuant to Section 1.2.4 or 1.2.6, as applicable, of this Schedule 15. Each such report shall (to the extent known at the time of submission of such report) describe:

- a. each of the programs that has been, or will be, established by the Developer to comply with its obligations under Section 7.1 of this Schedule 15;
- b. the participation and any equivalent targets that have been established in relation to each of the programs;

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- c. progress towards achieving such targets, both on an aggregate and a Contract Year basis; and
- d. any other relevant information.

8. DELIVERABLES

At a minimum, the Developer shall submit the following to the Department for Information, Acceptance, or Approval in accordance with the specified timeframes:

Table 1. Deliverables

Deliverable	Information, Acceptance, or Approval	Schedule
Details of the Civil Rights Program Manager (CRPM)	Acceptance	Prior to the issuance of NTP1, and at the time of any replacement.
Annual EEO Report (FHWA Form PR 1391)	Acceptance	Annually by August 15 during the Construction Period and the Operating Period.
Davis-Bacon monthly payroll reports	Acceptance	Monthly during the Construction Period and the Operating Period.
Small and Disadvantaged Business Participation Plan (SDBPP)	Approval	Prior to the issuance of NTP1
Annual Small Business Commitments	Acceptance	Concurrently with the SDBPP and concurrently with the Annual Performance Progress Review Report thereafter during the Construction Period.
Small Business Commitment for each DBE and ESB	Acceptance	Concurrently with the Annual Small Business Commitments or by 10th Working Day of each month, and no earlier than 90 Calendar Days prior to the firm commencing work.
Joint Venture Commitments	Acceptance	Concurrently with the Annual Small Business Commitments or by 10th Working Day of each month, and no earlier than 90 Calendar Days prior to the firm commencing work.
Joint Check Letter	Approval	Prior to any payment intended to be made with a joint check to a DBE or ESB.
Small Business Commitment Modification	Acceptance	Prior to occurrence requiring termination or modification or, if that is not possible, within five Calendar Days of the occurrence.
Small and Disadvantaged Business monthly reports	Acceptance	No later than the tenth Working Day of each month during the Construction Period and the Operating Period.
Semi-annual small and disadvantaged business assessment	Approval	Every six months during the Construction Period.
Uniform Report of DBE Awards or Commitments and Payments Form	Acceptance	Bi-annually by May 15 and November 15.
Annual small and disadvantaged business annual performance progress review report	Approval	No later than 30 Calendar Days before the end of each Contract Year during the Construction Period and the Operating Period.

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Deliverable	Information, Acceptance, or Approval	Schedule
Construction Period Small and Disadvantaged Business Final Report	Approval	No later than 30 Calendar Days prior to the Substantial Completion Date, with update as needed no later than 30 Calendar Days prior to the Final Acceptance Date.
Five-Year Routine O&M Work ESB Participation Plan	Approval	Concurrently with the Maintenance Management Plan at the commencement of each new five Contract Year period commencing with the Contract Year in which Substantial Completion occurs.
Five-Year Renewal Work DBE Participation Plan	Approval	Concurrently with the Maintenance Management Plan at the commencement of each new five-year period commencing with the Contract Year in which Substantial Completion occurs.
Small Business Commitment for each DBE on Renewal Work projects more than \$1 million	Acceptance	At least two weeks prior to the commencement of construction on each Renewal Work project more than \$1 million during the Operating Period.
Routine O&M Work ESB Five-Year Final Report	Approval	At the end of each sequential five Contract Year period within 30 Calendar Days after the end of the final Contract Year in such period.
Renewal Work DBE Five-Year Final Report	Approval	At the end of each sequential five Contract Year period within 30 Calendar Days after the end of the final Contract Year in such period.
Workforce Development Plan (WDP)	Approval	Prior to the issuance of NTP1.
Yearly WDP update	Approval	No later than 30 Calendar Days prior to the commencement of each Contract Year during Construction Period.
Approval form for each proposed OJT apprentice and trainee	Approval	Approval must occur before training begins
Enrollment and Residency Disclosure for each proposed local worker	Acceptance	Acceptance must occur before individual's hours may count toward the goal.
OJT monthly reports	Acceptance	Monthly during the Construction Period and the Operating Period.
Local hiring monthly reports	Acceptance	Monthly during the Construction Period.
Semi-annual workforce development assessment	Acceptance	Every six months during the Construction Period.
Construction Period Workforce Development Final Report	Approval	No later than 30 Calendar Days prior to the Substantial Completion Date, with update as needed no later than 30 Calendar Days prior to the Final Acceptance Date.

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Deliverable	Information, Acceptance, or Approval	Schedule
Community Development Program report	Acceptance	Prior to the issuance of NTP2, no later than 30 Calendar Days prior to the commencement of each Contract Year during the Construction Period and the Operating Period and no later than 30 Calendar Days after Substantial Completion.
Requests to assign portions of the Small Business and Workforce Development Goals and associated deductions/incentives to Subcontractors	Acceptance	Prior to the execution of the applicable Subcontract.

9. APPENDICES

- Appendix A Construction Work Small Business Goals Compliance and Plan Requirements
- Appendix B Construction Period Workforce Development Goals Compliance and Plan Requirements
- Appendix C Operating Period Goals Compliance and Plan Requirements
- Appendix D Davis-Bacon Wage Decisions
- Appendix E Executive Order No. 11246
- Appendix F CDOT’s Special Standard Provision for “Affirmative Action Requirements Equal Employment Opportunity”
- Appendix G USDOT Standard Title VI/Non-Discrimination Assurances
- Appendix H FHWA Form 1273 (Revised May 1, 2012)

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Appendix A**Construction Work Small Business Goals Compliance and Plan Requirements****Part I. Small and Disadvantaged Business Participation Plan (SDBPP)**

The Developer's SDBPP shall include the following:

1. Identification of the CPRM and the other team members responsible for small business program development, including:
 - a. The names of the small business team members and team members' experience working with small businesses or agencies on transportation or construction projects.
 - b. The roles and responsibilities of the team members, including descriptions of their activities as well as the delegated authority of the team members and how they are integrated with Key Personnel on the Project, and identification of meetings they will attend.
2. Strategic Approach for Meeting Goals during the Construction Period including:
 - a. Outline of how the Developer will calculate the value of Design Services and Other Construction Work in compliance with Part II of this Appendix A.
 - b. An estimated schedule for achievement of each of the Construction Work Small Business Goals. The Developer shall outline the expected participation toward achieving each goal over the Construction Period and identify an annual target for each goal for each Contract Year during the Construction Period. This outline shall set the framework for achieving the Construction Work Small Business Goals during the Construction Period.
 - c. For each Construction Work Small Business Goal, a list of the areas of Work the Developer has identified for potential DBE or ESB participation with a range of the approximate percentage of the value of the applicable Construction Work relative to the value of all Construction Work. The SDBPP must reflect a reasonable approach to meeting the goals with ready, willing and able DBEs and ESBs to perform the applicable Work. The Developer shall consult the respective directories at www.coloradodbe.org and www.coloradoesb.org to ensure availability to meet the goals. If already selected, DBE or ESB team members should be identified in respect of their relevant area(s) of Work.
 - d. The strategic approach to integrating achievement of small business participation into the overall approach to subcontracting, including discussion of how the Developer will communicate opportunities, create a transparent process, unbundle work to establish opportunities for small businesses, or take other actions to secure DBE and ESB participation.
 - e. A description of how participation will be monitored and tracked. Describe the internal procedures through which the Developer will ensure the Construction Work Small Business Goals are met. This will include distribution of the goal responsibilities to Subcontractors, collecting data on Subcontractor participation and performance, ensuring only valid performance is counted, etc.
3. Approach to small business development and assistance including:
 - a. Methods for ensuring prompt payment to all Subcontractors (for certainty, not only DBE or ESB Subcontractors), including a description as to whether and how the Developer will implement any additional prompt payment requirements, beyond those mandated in Section 17.5 of the Project Agreement, as well as the process by which the Developer will track and monitor the following: invoicing by Subcontractors; prompt payment to Subcontractors; and release of retainage. This portion of the plan shall include any efforts that the Developer and Subcontractors that are not themselves DBEs or ESBs will make to assist with mobilization efforts and early purchase of materials, or any other payment measures that will aid the viability of small business participation in the Work.

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- b. Assistance with bonding and insurance, including a description of any measures to be implemented by the Developer or its team members to assist DBEs and ESBs with bonding and insurance while maintaining compliance with the applicable provisions of this Agreement and the requirements of Law. This may include any of the following: adding DBEs and ESBs to insurance plans; waiving bond requirements; phased bonding; and limitations on bond and insurance requirements imposed by Subcontractors.
- c. Small business outreach, training, and development, including at a minimum, a description of how Developer will:
 - i. conduct a mandatory outreach event directed at DBE and ESB firms after the Agreement Date and prior to the issuance of NTP2;
 - ii. collaborate with and utilize CDOT's established Connect2DOT Program (www.connect2dot.org);
 - iii. assist in the development and facilitation of a Connect2DOT Transportation Leading Edge Course for firms participating or seeking to participate in the Construction Work (see <http://www.connect2dot.org/need-assistance/leading-edge> for more information);
 - iv. regularly bring Project updates to and participate in CDOT's quarterly Small Business Collaborative Forums;
 - v. on a monthly basis, provide a list of upcoming subcontracting opportunities and events for distribution via the Connect2DOT newsletter;
 - vi. conduct any other measures of outreach, training and development and the resources dedicated to such measures; and
 - vii. conduct any other activities or efforts not included in the above related to achievement of the Construction Work Small Business Goals.

Part II. Good Faith Efforts, Commitments and Counting

1. Good Faith Efforts Requirement. Pursuant to Section 6.2.1 of this Schedule 15, the Developer is required to make good faith efforts to achieve the Construction Work Small Business Goals. Good faith efforts means all necessary and reasonable steps to achieve the relevant goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to achieve the goal, even if not fully successful. For additional guidance on how the Department will determine whether or not it considers that the Developer has made good faith efforts, see 49 CFR Part 26 Appendix A.
 - a. The Developer's good faith efforts toward achieving the Construction Work Small Business Goals shall be evaluated annually at a minimum but a final determination by the Department as to whether the Developer has complied with its obligation to make good faith efforts shall be made at Substantial Completion. The Department may issue a written non-compliance warning as it deems necessary if it believes the Developer is not making good faith efforts at any time during the Construction Period.
 - b. For each Construction Work Small Business Goal, the Developer shall submit, and obtain the Acceptance of the Department of, its annual small business commitments prior to the commencement of every Contract Year during the Construction Period. The initial list of annual small business commitments shall be submitted concurrently with the Developer's SDBPP for Acceptance by the Department prior to the issuance of NTP1. Each year thereafter, the annual small business commitments shall be submitted with the Annual Performance Progress Review Report (as required to be submitted pursuant to Section 5 of Part III of this Appendix A) no later than 30 Calendar Days prior to the commencement of each Contract Year. The annual small business commitments shall list all Small Business Commitments to DBE and ESB firms for the upcoming Contract Year sufficient to meet or exceed the annual participation target established for such year by the Developer in its SDBPP. A "Small Business Commitment" is a portion of the Design

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Services or Other Construction Work, identified by dollar amount and Work area, designated by the Developer for participation by a particular DBE or ESB. For each firm listed, the Developer shall also provide a "Commitment Confirmation Form" in a form to be agreed between the Parties (both acting reasonably) (further described in Section 3 of this Part II) for Acceptance.

- c. If the total eligible participation in the annual small business commitments does not meet the Developer's identified annual target, the Developer shall provide a description of the good faith efforts made to obtain commitments prior to submission of the annual small business commitments and additional good faith efforts that will be made during the current year to maintain compliance with the SBDPP. This description of good faith efforts is subject to Approval by the Department.
2. Construction Work Small Business Goal Calculation. The goals shall be calculated as follows:
- a. For purposes of this Schedule 15, the Construction Work to be performed during the Construction Period shall be separated (i) into design-related activities ("Design Services") (as further defined below) and (ii) all other Work to be performed during the Construction Period under the terms of the Construction Contract (excluding, for certainty, O&M Work During Construction) ("Other Construction Work").
 - b. For the purposes of this Schedule 15, "Design Services" shall be comprised of all program management, construction management, feasibility study, preliminary engineering, design, engineering, surveying, mapping, and architectural related services that comprise part of the Construction Work; provided, however, that, (i) the following (or equivalent) Design Services performed by the Construction Contractor or its Subcontractors such as construction surveying, erosion control consulting, health and safety plans, and public involvement may, at the Developer's reasonable discretion, be considered Other Construction Work and (ii) the Developer may request that any other Design Services that are under the direct control of the Construction Contractor be included in the Other Construction Work subject to the Department's consent. The Developer must establish whether design-related activities under the direct control of the Construction Contractor will be considered in Design Services or Other Construction Work and make any other requests for modifications to these categories in its draft SDBPP. The Department may request additional data to verify the value of the Design Services.
 - c. The dollar value of the DBE Design Goal and ESB Design Goal shall each be determined by multiplying the percentage of the goal set out in Section 6.1 of this Schedule 15 by the total value of the Design Services. Subject to Section 3 of this Part II of this Appendix A, only the performance of Design Services by DBEs and ESBs, respectively, shall count toward achieving the respective goals, provided that (for certainty) the participation in the performance of Design Services by a firm that is certified as both a DBE and an ESB shall count towards the achievement of both goals.
 - d. The dollar value of the DBE Construction Goal and ESB Construction Goal shall each be determined by multiplying the percentage of the goal set out in Section 6.1 of this Schedule 15 by the total value of the Other Construction Work. Subject to Section 3 of this Part II of this Appendix A, only the performance of Other Construction Work by DBEs and ESBs, respectively, shall count toward achieving the respective goals, provided that (for certainty) the participation in the performance of Other Construction Work by a firm that is certified as both a DBE and an ESB shall count towards the achievement of both goals.
3. Counting Eligible Participation. Unless otherwise specified in this Appendix A, eligible DBE participation will be counted in accordance with 49 CFR 26.55. ESB participation will be counted in the same manner as DBE participation with the exception that ESBs do not have work codes and therefore are not limited to performance in certain work areas.

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- a. In order for the work performed by a DBE or ESB to count toward achieving a Construction Work Small Business Goal, the Developer must have an Accepted Small Business Commitment for the Work to be performed. All proposed Small Business Commitments to DBE and ESB firms must be submitted to the Department for Acceptance prior to the DBE or ESB commencing work in order for the participation to be counted toward the relevant Construction Work Small Business Goal. Once Accepted, Small Business Commitments are enforceable obligations from the Developer under this Agreement. Each DBE and ESB firm must be certified for the work to be performed upon submission of the Small Business Commitment.
 - i. For firms not listed in its annual small business commitments, the Developer shall submit a "Commitment Confirmation Form," in a form to be agreed between the parties (both acting reasonably), no later than the 10th Working Day of each month during the Term. The Commitment Confirmation Form must be submitted no earlier than 90 Calendar Days prior to the firm commencing work.
 - ii. For trucking participation by DBE and/or ESB firms, the Developer may submit an overall trucking commitment for an annual period with a list of DBE or ESB firms that will perform work under such commitment. Each DBE and ESB firm listed may provide no more than \$100,000 of participation under this commitment. The Developer shall submit a Commitment Confirmation Form for each listed firm and the annual overall commitment for each goal shall be submitted for Approval concurrently with its list of annual small business commitments. For any individual trucking firm with a commitment more than \$100,000, the Developer shall submit a separate Small Business Commitment for that firm.
 - b. The Work performed by a DBE or ESB must be reasonably construed to be included in the work area identified by the Developer in the Accepted Small Business Commitment. DBE firms must be certified in the applicable work code (NAICS code plus descriptor) for the work to be performed. A DBE cannot receive credit for work in an area for which it is not certified.
 - c. The Department's DBE Program does not permit the counting of participation by non-certified trucking firms.
 - d. In accordance with 49 CFR 26.55(2), the Developer shall only count a reasonable fee for contract-specific services toward achieving the relevant Construction Work Small Business Goal. Non-contract specific expenses may not be counted. In the case of temporary employment placement agencies, only the placement fee and fees for a temporary employee that will be specifically and exclusively used for work on the Project shall count toward achieving the relevant Construction Work Small Business Goal; the temporary employee's hourly fee will not count.
 - e. Work by a DBE or ESB firm that was not certified for the work to be performed upon execution of its Subcontract will not count toward achieving the relevant Construction Work Small Business Goal. If a DBE or ESB is decertified in the work to be performed after Acceptance of a Small Business Commitment and the execution of a Subcontract, the Developer may still count the DBE or ESB participation toward achieving the relevant Construction Work Small Business Goal.
 - f. If the Developer seeks to count participation by a DBE or ESB firm engaged in a joint venture, the Developer shall seek Acceptance from the Department of the joint venture's eligible participation by submitting the joint venture agreement explaining the work and management arrangement between the joint venture.
4. Commercially Useful Function ("CUF") Reviews. All DBEs and ESBs must perform a commercially useful function as defined by 49 CFR § 26.55.

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- a. The Developer shall monitor all DBE and ESB firms to ensure those firms are performing a CUF. The Department shall determine whether a DBE or ESB firm has performed a CUF on the Project. If the Department determines that a firm is not performing a CUF pursuant to 49 CFR § 26.55, no work performed by such firm shall count toward achieving the relevant Construction Work Small Business Goal.
 - b. The use of joint checks to DBEs and ESBs must be Approved by the Department before used to make a payment. The Developer shall request Approval for the use of a joint check in a written letter signed by the DBE/ESB and the Developer, stating the reason for the joint checks and the approximate number of checks that will be needed.
5. Small Business Commitment modifications. The Developer shall not terminate, reduce or otherwise modify the work to be performed under a Small Business Commitment without Acceptance from the Department. If, due to exigent circumstances, it is not possible for the Developer to seek Acceptance prior to termination, reduction or modification, the Developer shall submit to the Department a request for Acceptance within five Calendar Days of the occurrence requiring such action. Requests for Acceptance shall be made upon a form mutually agreed by the Developer and the Department (both acting reasonably).
- a. Terminations and reductions include instances in which the Developer seeks to perform work originally designated for a DBE/ESB Subcontractor with its own forces, those of an Affiliate, a non-DBE/ESB firm or with another DBE/ESB firm.
 - i. In order to receive Acceptance of a termination or reduction, the Developer shall, at a minimum, have good cause for the termination or reduction as outlined in 49 CFR § 26.53(f).
 - ii. Prior to requesting Acceptance of a termination or reduction, the Developer shall provide the firm written notice of the Developer's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the Department. In such notice of intent, the Developer shall provide the firm at least five Working Days to respond to the notice and to inform the Department and the Developer of the reasons, if any, why it objects to the proposed termination or reduction and any reasons why it considers that it should not be Accepted. The Developer is not required to provide the five Working Days' written notice in cases where the DBE or ESB has provided written notice that it is withdrawing. The notice period may be reduced by the Department in its discretion if required by public necessity. The Developer shall not request Acceptance until the period has passed or been waived.
 - b. Requests for other modifications, such as the addition of Work to be performed by the DBE or ESB, shall be made by submitting an updated Commitment Confirmation Form for Acceptance by the Department.
 - c. The Developer shall make good faith efforts to replace any DBE or ESB commitment that has been terminated or reduced with another DBE or ESB firm as outlined in 49 CFR § 26.53(g).

Part III. Reporting Requirements

1. Disclosure of information: In order for the Department to monitor and enforce the requirements of this Schedule 15, the Developer shall accurately track and disclose to the Department the cumulative value of the Design Services, the cumulative value of the Other Construction Work, and the value of all individual Subcontracts (and, for certainty, this requirement shall apply to all Subcontracts and not just DBE or ESB Subcontracts). The Department may verify this information by reviewing contracts and payment documents which shall be provided upon request.
2. Monthly Reporting: In accordance with Schedule 8 (Project Administration) the Developer shall submit a monthly summary report (in a form to be agreed between the Parties, both acting reasonably) to the Department for Acceptance no later than the tenth Working Day of each month during the Construction Period. The report shall include:

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- a. Subcontractor Participation and Payment: total value of (1) Design Services, (2) all Other Construction Work, (3) Routine O&M Work and (4) all other O&M Work During Construction to date (regardless of the entity that has performed such Work); a detailed breakdown of all Subcontractors (and, for certainty, this requirement shall apply to all Subcontractors and not just DBE or ESB Subcontractors) that have participated on the Project to date, separated by these same four categories of Work. It shall include:
 - i. firm name;
 - ii. whether the firm is an ESB or DBE and the Small Business Commitment amount to the firm and whether the firm is a Small Subcontractor;
 - iii. Subcontract amount; area of work performed; total paid to date to the firm; most recent invoice date and amount; most recent payment date and amount;
 - iv. identification of all parties to the relevant Subcontract and to the higher and lower tier Subcontracts associated with the Subcontract; and
 - v. any other relevant information to facilitate the Enterprises' assessment of compliance by the Developer with Section 17.5 of the Project Agreement in relation to the Subcontract.
 - b. Outreach and Upcoming Opportunities: a description of work areas on the Project for which the Developer is seeking Subcontractors. The description shall also include upcoming outreach and training events.
 - c. Compliance Issues Report: details of any issues that the Department should be aware of regarding DBE and ESB participation on the Project. This may include payment disputes, non-performance by DBEs and ESBs, significant scope of work changes, potential CUF concerns or other performance issues.
3. Semi-annual Assessment: In addition to the monthly report required to be submitted in the relevant month, the Developer shall, pursuant to Section 1.2.3 of this Schedule 15, also submit to the Department for Approval on a semi-annual basis an assessment of progress (in a form to be agreed between the Parties, both acting reasonably) toward achieving the Construction Work Small Business Goals, including a summary of solicitation and good faith efforts to date, and anticipated DBE and ESB participation for the next six months.
 4. Uniform Report of DBE Awards or Commitments and Payments Form: By May 15 and November 15 of each year, the Developer shall submit to the Department for Acceptance a completed Uniform Report of DBE Awards or Commitments and Payments Form that has been completed in accordance with Appendix B of 49 CFR Part 26.
 5. Annual Performance Progress Report and Reviews: In addition to the monthly and semi-annual reports referred to in Sections 2 and 3 of this Part III, the Developer shall submit an annual report (in a form to be agreed between the Parties, both acting reasonably) to the Department for Approval no later than 30 Calendar Days before the end of each Contract Year and prior to the annual progress review conducted in respect of such Contract Year pursuant to Section 1.2.4 of this Schedule 15, which report shall include the following information:
 - a. Bidders List: The Developer shall list all firms that submitted a quote to participate on the Project. The list shall include a description of the work for which the bid was submitted, whether the firm is a DBE or ESB, and whether they were selected for the work.
 - b. Participation Assessment: A summary and assessment of DBE and ESB participation of the past Contract Year and total to date progress made toward achieving the Construction Work Small Business Goals.
 - c. Strategies for continuing implementation of the SDBPP: This shall include proposed areas of work for DBEs and ESBs and outreach efforts for the next Contract Year.
 - d. If necessary, a request for amending the SDBPP if the Developer has not met its annual target for the current Contract Year or if the Developer has not met other commitments

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detailed in the SDBPP. The request shall include a revised schedule of annual targets for each Construction Work Small Business Goal. The revised schedule of annual targets shall include a description of the Developer's approach to making up the participation not achieved during the current Contract Year.

6. Department Annual Assessment: Within 30 Calendar Days after each Annual Performance Progress Review conducted pursuant to Section 1.2.4 of this Schedule 15, the Department shall provide a written determination on the Developer's progress toward achieving the Construction Work Small Business Goals. Progress will be based on the Developer's demonstrated good faith efforts, compliance with its SDBPP and meeting the schedules and milestones described in the plan.
7. Final Report: The Developer shall submit, for Approval by the Department, its final report (in a form to be agreed between the Parties, both acting reasonably) on DBE and ESB participation during the Construction Period no later than 30 Calendar Days prior to the Substantial Completion Date. The final report shall include a summary report of total DBE and ESB participation toward achieving each of the Construction Work Small Business Goals. The report shall include the Small Business Commitment amount, the actual dollar amount paid to each DBE or ESB firm, the eligible participation amount, area of work performed, and the total value of the Design Services and Other Construction Work. In the event that Developer failed to achieve any Construction Work Small Business Goal as of the Substantial Completion Date (as determined by the Department pursuant to Section 8 of Part III of this Appendix A of this Schedule 15), the Developer shall submit, for Approval by the Department, an updated report no later than 30 Calendar Days prior to the Final Acceptance Date.
8. Department Report: Following Approval of the Developer's report (or any update thereto) submitted pursuant to Section 7 of Part III of this Appendix A, the Department will evaluate the data to determine, and issue a written report setting out its determination of, whether the Developer has (i) achieved each of the Construction Work Small Business Goals as of the Substantial Completion Date (or, as applicable, as of the Final Acceptance Date) and (ii) in relation to any such goal that has not been met, demonstrated that it has made good efforts to achieve such goal.

Appendix B

Construction Period Workforce Development Goals Compliance and Plan Requirements

Part I. Workforce Development Plan Requirements

The WDP shall at a minimum include the following elements:

1. General Plan Requirements:
 - a. A written statement indicating the Developer's commitment to achieve the Construction Period OJT Goal and the Local Hiring Goal.
 - b. A description of the CRPM and other team members responsible for implementing the Developer's WDP, including the name of each team member, a description of their workforce development experience, and a description of their roles and responsibilities on this Project.
 - c. A description of how the Developer and all Subcontractors will recruit their workforce, including planned outreach events involving the local community. The Developer shall describe how it will work with CDOT-approved workforce development organizations to advertise job openings locally.
 - d. A description of how the Developer plans to utilize Subcontractors to achieve the Construction Period OJT Goal and Local Hiring Goal.
 - e. A description of how the Developer plans to utilize high school outreach programs such as Denver Public Schools' Career Connect and Arrupe Jesuit's Corporate Workforce Program to staff administrative, internship, or other opportunities.
2. On-The-Job Training Plan: With respect to OJT:
 - a. Identification of the number and description of the skilled craft areas where trainees and apprentices will be used during the Construction Period on Other Construction Work.
 - b. The minimum length and type of training that will be offered for each position.
 - c. A description of how the Developer will monitor hours completed, training provided, and how the Developer will alleviate barriers to employment, graduation and successful permanent placement.
 - d. A description of the Developer's approach to graduating participants. The Developer shall identify a target number of graduates in order to maximize participant graduation rates from the pre-approved trainee/apprenticeship programs during the Construction Period.
 - e. An annual schedule indicating the distribution of training hours over each Contract Year for the duration of the Construction Period.
 - f. The Developer shall describe recovery tools and methods that will be implemented should appropriate progress not be made toward the overall goal attainment.
3. Local hiring plan: With respect to local hiring
 - a. Strategic approach for meeting the Local Hiring Goal, including the identification of jobs targeted for recruitment, the estimated length of employment associated with identified jobs, and an estimated schedule of the distribution of hours for the Construction Period.
 - b. A description of how the Developer shall provide assistance to prospective and actual local employees to alleviate barriers to employment and to promote retention.
 - c. A description of how the Developer shall monitor and track hours worked and of the internal procedures through which the Developer will ensure the Local Hiring Goal will be met. This will include distribution of the goal responsibilities to Subcontractors, collecting data on Subcontractor participation and performance, and ensuring only valid participation is counted.

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- d. A description of how the Developer plans to ensure compliance with the residency requirements in Section 2 of Part III of this Appendix B for workers that will count toward the Local Hiring Goal.
 - e. An affirmative statement that no existing employees of the Developer or any Subcontractor will be displaced or have their employment terminated as a result of the Local Hiring Goal.
4. Plan Updates. The WDP is intended to be a living document and shall be updated or revised as necessary during the course of the Construction Period, including as requested by the Department. At a minimum, an update of the WDP shall be submitted to the Department for Approval no later than 30 Calendar Days prior to the commencement of each Contract Year.

Part II. Advertisement of Job Openings

To ensure local workers are given full and fair opportunity to participate in the hiring process for vacant positions, the Developer and all Subcontractors shall advertise all job openings with Department- approved workforce development organizations for a period of seven Calendar Days before such job openings can be advertised through any other sources.

Part III. Counting goal participation

- 1. Counting OJT participation
 - a. OJT participation that counts toward satisfying the Construction Period OJT Goal shall be calculated based on the aggregate number of employment hours on Other Construction Work (excluding, for certainty, O&M Work During Construction) worked by trainees and apprentices who satisfy the requirements below.
 - b. The employment of the following categories of individuals by the Developer (and Subcontractors) shall count towards achieving the Construction Period OJT Goal:
 - i. trainees that are enrolled in a program approved by the Department and FHWA;
 - ii. apprentices that are enrolled and duly registered in a U.S. Department of Labor approved program; and/or
 - iii. trainees that are enrolled in an approved program with Colorado Contractors Association (CCA).
 - c. In addition, a proposed apprentice or trainee must have been Approved by the Department for such individual's participation to be counted toward achieving the Construction Period OJT Goal. Approval must occur before employment hours can be counted toward the goal. To obtain Approval for the apprentice or trainee, the Developer must submit the following to the Department for each apprentice and each trainee:
 - i. evidence of the registration of the trainee or apprentice into the approved training program; and
 - ii. the completed CDOT form for each trainee or apprentice.
 - d. The employment of a trainee/apprentice in a skilled craft will not be counted toward the Construction Period OJT Goal if that individual has already worked or been paid at a professional/journeyman level status for more than 6 months prior to Approval of their participation as a trainee/apprentice.
 - e. Before training begins, the Developer shall provide each trainee with a copy of the approved training program, pay scale, pension and retirement benefits, health and disability benefits, promotional opportunities, other employer policies and complaint procedures.

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2. Counting local hiring program participation
 - a. For the purposes of this Schedule 15, the geographic area applicable to the Local Hiring Goal consists of the following zip codes: 80010, 80011, 80019, 80022, 80205, 80207, 80211, 80216, 80221, 80238, 80239, 80249, and 80266.
 - b. For a worker's hours to be eligible for the Local Hiring Goal, the individual must perform a function on the Project (whether as skilled or non-skilled labor) and meet one of the following eligibility criteria:
 - i. **Current Resident:** An individual that has resided in the local hire geographic area for a minimum of 60 consecutive Calendar Days and continues to reside in the geographic area. A current resident's hours are eligible to count toward the Local Hiring Goal for as long as the individual resides in the local hire geographic area;
 - ii. **Former Resident:** An individual that resided in the local hire geographic area for a minimum of 180 consecutive Calendar Days provided that such period of residency ended no more than one year prior to the Agreement Date. A former resident's hours are eligible to count toward the Local Hiring Goal for the duration of the Construction Period;
 - iii. **Displaced Resident:** An individual that was subjected to a Right-of-Way relocation. A displaced resident's hours are eligible to count toward the Local Hiring Goal for the duration of the Construction Period.
 - c. A proposed local worker must have been Accepted by the Department for such individual's hours to be counted toward the Local Hiring Goal. Acceptance must occur before the participation can be counted toward the Local Hiring Goal. To gain Acceptance, the Developer must submit the following to the Department for each local worker:
 - i. Completed Local Hiring Program Enrollment, in a form to be agreed between the Parties (both acting reasonably);
 - ii. A self-certifying Residency Disclosure, in a form to be agreed between the Parties (both acting reasonably), signed by the individual whose employment hours are to be counted toward the Local Hiring Goal; and
 - iii. Any additional documentation to prove residency or prior residency on a case-by- case basis as the Department determines is necessary.
 - d. Hours worked by local workers must be documented and reported (pursuant to Part IV of this Appendix B) to the Department in a format mutually agreed upon by the Developer and the Department (both acting reasonably).
 - e. The Developer shall notify the Department when an Accepted current resident worker no longer meets the eligibility requirements within 14 Calendar Days of the local worker's employer obtaining knowledge of the local worker's new residency status. The Developer may seek Acceptance for the worker to count as a former resident if eligible. Failure to notify the Department in accordance with this Section may result in all of the individual local worker's hours being disqualified from counting toward the Local Hiring Goal.
 - f. The Developer and all Subcontractors are prohibited from displacing or terminating existing employees to attain the Local Hiring Goal.

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Part IV. Reporting requirements

1. Disclosure of Information: In order to monitor and enforce the requirements of this Schedule 15, the Developer shall disclose employment records for trainees and apprentices as well as individuals that will count toward achieving the Local Hiring Goal. The Department may verify employment records and information by reviewing personnel files as well as interviewing any individual employed by the Developer or any Subcontractor.
2. Records: The Developer shall keep records regarding the progress of the Workforce Development Plan participation on the Project, including Subcontractor participation.
3. Reports: The Developer shall submit each of the following reports for Acceptance:
 - a. Monthly report: In accordance with Schedule 8 (*Project Administration*) the Developer shall submit a monthly report (in a form to be agreed between the Parties, both acting reasonably) to the Department no later than the tenth Working Day of each Month during the Construction Period. The report shall include:
 - i. On-The-Job Training reports, which shall include the following, at a minimum:
 - A. Total employment hours expended during the Construction Period to date separated into skilled craft employment hours, professional services employment hours, and all other employment hours.
 - B. Total employment hours by trainees/apprentices expended during the Construction Period to date.
 - C. Updated projected employment hours by trainees/apprentices for the Work during the Construction Period.
 - D. If the projected employment hours are less than the Construction Period OJT Goal, the Developer shall provide an explanation detailing how it intends to meet the OJT participation projections outlined in its WDP, including a description of activities and other proactive measures intended to facilitate increased OJT participation.
 - E. A list of current and new (i.e. since the last report) trainees/apprentices by providing full name, employer, description of services or applicable work code, start date, skilled craft program registered in (including verification of enrollment) for trainees/apprentices, total hours worked in current month, pay rate, total hours worked to date on the Project, supervisor full name, and a description of the training and performance level.
 - F. Any performance problems with the training/apprenticeship participants and how the problems were resolved, including any reasons for participants leaving the Project.
 - G. A list of trainees/apprentices that have graduated or successfully completed their training program, and last date worked on site.
 - H. A signature by the Developer certifying the information in the report is accurate.
 - ii. Local Hiring Program reports, which shall include the following, at a minimum:
 - A. Total employment hours expended during the Construction Period to date separated into skilled craft employment hours, professional services employment hours, and all other employment hours.
 - B. Total hours worked by individuals hired locally during the Construction Period to date, separated into skilled craft employment hours, professional service employment hours, and all other employment hours.

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- The Developer shall specify whether each worker is considered a new hire.
- C. Projected local hiring hours to be utilized during the Construction Period.
 - D. If the projected local hiring hours worked are less than the Local Hiring Goal, the Developer shall provide an explanation detailing how it intends to achieve the Local Hiring Goal including any remedies necessary to meet the Local Hiring Goal.
 - E. A list of current newly (i.e. since the last report) employed locally hired individuals, within that month, by providing full name, address, employer, description of services or applicable work code, start date, skilled craft program registered in (including verification of enrollment for newly employed individuals) if applicable, total hours worked in current month, pay rate, total hours worked to date on the Project, supervisor full name, address verification, and a description of performance level.
 - F. Any performance problems with the locally hired individuals and how the problems were resolved, including any reasons for individuals leaving the Project.
 - G. A signature by the Developer certifying the information in the report is accurate.
4. Semi-annual Assessment: In addition to the monthly report required to be submitted in the relevant month, the Developer shall, pursuant to Section 1.2.3 of this Schedule 15, also submit to the Department for Acceptance on a semi-annual basis an assessment of progress (in a form to be agreed between the Parties, both acting reasonably) toward achieving the Workforce Development Goals applicable during the Construction Period, which shall include the following:
 - a. a summary of solicitation and good faith efforts to date, effectiveness of the program, identification of areas for improvement, and recommendations for improving the WDP; and
 - b. a notification as to whether the Developer considers that it has achieved any of the incentive milestones described in Sections 1.a to 1.c of Part V of this Appendix B. For any On-the-Job Training milestone reached, the Developer shall submit documentation evidencing that the trainee/apprentice has graduated from the applicable OJT Program and has since worked at least six months as a full-time journeyman on the Project in the skilled craft for which the individual graduated. Documentation shall include payrolls showing the individual worked as a fulltime journeyman.
 5. Annual Performance Progress Review: The Developer shall participate in an annual meeting with the Department within 30 Calendar Days before the end of each Contract Year to review its progress with its Workforce Development Plan and toward achieving the Workforce Development Goals applicable during the Construction Period. Within 30 Calendar Days after the annual performance review meeting, the Department will provide a written assessment as to whether the Developer has made adequate progress toward achieving the Construction Period OJT Goal and the Local Hiring Goal. Progress will be based on the Developer's demonstrated efforts with implementing its Workforce Development Plan and meeting the schedules and milestones described within the Workforce Development Plan.
 6. Final Report: The Developer shall submit, for Approval by the Department, its final report (in a form to be agreed between the Parties, both acting reasonably) on OJT and local hiring participation during the Construction Period no later than 30 Calendar Days prior to the Substantial Completion Date. The final report shall include total participation data through Substantial Completion. In the event that the Developer failed to achieve either the Local Hiring Goal or the Construction Period OJT Goal as of the Substantial Completion Date (as determined by the Department pursuant to Section 7 of this Appendix B), the Developer shall submit, for

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Approval by the Department, an updated report no later than 30 Calendar Days prior to the Final Acceptance Date.

7. Department Report: Following Approval of the Developer's report (or any update thereto) submitted pursuant to Section 6 of this Appendix B, the Department will evaluate the data to determine, and issue a written report setting out its determination of, whether the Developer has achieved as of the Substantial Completion Date (or, as applicable, as of the Final Acceptance Date) each of the Local Hiring Goal and the Construction Period OJT Goal. Such report shall also confirm whether or not the Developer is entitled to be paid any incentive payment(s) pursuant to Section 2 of Part V of this Appendix B and, if so entitled, the amount thereof (including relevant calculations).

Part V. Monetary Incentives for Workforce Participation

1. Monetary incentives for On-the-Job Training Participation:
 - a. The Enterprises shall pay the Developer the applicable monetary incentive set out below for reaching one of the following milestones by the end of the third Contract Year of the Construction Period:
 - i. \$40,000 for achieving a total of 120,000 employment hours and graduating and retaining for at least six months after graduation 21 individuals; or
 - ii. \$60,000 for achieving a total of 120,000 employment hours and graduating and retaining for at least six months after graduation 23 individuals; or
 - iii. \$80,000 for achieving a total of 120,000 employment hours and graduating and retaining for at least six months after graduation 25 individuals.
 - b. The Enterprises shall pay the Developer the applicable monetary incentive set out below for reaching one of the following milestones by the end of the fourth Contract Year of the Construction Period:
 - i. \$40,000 for achieving a total of 160,000 employment hours and graduating and retaining for at least six months after graduation 31 individuals; or
 - ii. \$60,000 for achieving a total of 160,000 employment hours and graduating and retaining for at least six months after graduation 33 individuals; or
 - iii. \$80,000 for achieving a total of 160,000 employment hours and graduating and retaining for at least six months after graduation 35 individuals.
 - c. The Enterprises shall pay the Developer the applicable monetary incentive set out below for reaching one of the following milestones by Substantial Completion:
 - i. \$50,000 for achieving a total of 200,000 employment hours and graduating and retaining for at least six months after graduation 41 individuals; or
 - ii. \$70,000 for achieving a total of 200,000 employment hours and graduating and retaining for at least six months after graduation 43 individuals; or
 - iii. \$90,000 for achieving a total of 200,000 employment hours and graduating and retaining for at least six months after graduation 45 individuals.
 - d. For purposes of this Section 1:
 - i. eligible employment hours shall be calculated in accordance with Section 1 of Part III of this Appendix B;
 - ii. graduation means the individual has completed his or her training or apprenticeship program described in Section 1 of Part III of this Appendix B and has reached full journeyman status; and
 - iii. retention means the individual is working full-time on the Project as a journeyman in the skilled craft for which they graduated.

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- e. Any amount payable pursuant to this Section 1 shall be paid no later than 45 Calendar Days after receipt by the Enterprises of an invoice from the Developer for the relevant amount, provided that the Developer shall not be entitled (i) to deliver such an invoice until after the Department has issued an assessment pursuant to Section 5 of Part IV of this Appendix B confirming that the Developer is entitled to such a payment and (ii) to any such payment earlier than the end of the relevant Contract Year by reference to which the relevant milestone is to be determined.
2. Monetary incentives for Local Hiring participation:
 - a. The Enterprises shall pay the Developer \$125,000 for achieving the Local Hiring Goal.
 - b. The Enterprises shall pay the Developer \$2.50 for every local employment hour worked by a new hire (as defined in Section 6.3.1.b of this Schedule 15) achieved in excess of the Local Hiring Goal, with a total maximum incentive payment payable pursuant to this Section 2.b of \$125,000.
 - c. Any amount payable pursuant to this Section 2 shall be paid no later than 45 Calendar Days after receipt by the Enterprises of an invoice from the Developer for the relevant amount, provided that the Developer shall not be entitled to deliver such an invoice until after the Department has issued a report pursuant to Section 7 of Part IV of this Appendix B that confirms the Developer's entitlement to such a payment.

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Appendix C
Operating Period Goals Compliance and Plan Requirements

Part I. Routine O&M Work ESB Goals and Requirements

1. Routine O&M Work ESB Goal: Pursuant to Section 6.2.2 of this Schedule 15, the Developer is required to make good faith efforts to achieve the Routine O&M Work ESB Goal applicable to each sequential five Contract Year period during the Operating Period. Good faith efforts means all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to achieve the goal, even if not successful. For additional guidance on how the Department will determine whether or not it considers that the Developer has made good faith efforts, see 49 CFR Part 26 Appendix A.
2. Five-Year Routine O&M Work ESB Participation Plan: Commencing with the Contract Year in which Substantial Completion occurs, the Developer shall submit the following information for Approval at the same time as it submits its Maintenance Management Plan prior to the commencement of each new five Contract Year period:
 - a. An estimated schedule for achievement of the Routine O&M Work ESB Goal applicable to the relevant five Contract Year period. The Developer shall outline the expected participation toward achieving the goal. This outline shall set the framework for achieving the Routine O&M Work ESB Goal during such period.
 - b. A list of the areas of Work the Developer has identified for potential ESB participation and approximate dollar value of each area.
 - c. A description of how participation will be monitored and tracked and the internal procedures through which the Developer will ensure the goal is met. This will include distribution of goal responsibilities to Subcontractors, collecting data on Subcontractor participation and performance, and ensuring only valid performance is counted.
 - d. Methods for ensuring prompt payment to all Subcontractors (for certainty, not only ESB Subcontractors) performing O&M Work After Construction (other than Renewal Work) (for certainty, not just Routine O&M Work) during the Operating Period, including a description as to whether and how the Developer will implement any additional prompt payment requirements, beyond those mandated in Section 17.5 of the Project Agreement, as well as the process by which the Developer will track and monitor the following: invoicing by Subcontractors; prompt payment to Subcontractors; and release of retainage. This portion of the plan shall include any efforts that the Developer and Subcontractors that are not themselves ESBs will make to assist with mobilization efforts and early purchase of materials, or any other payment measures that will aid the viability of small business participation in the Work.
3. Commitments and Counting
 - a. Commitments. In order for the work performed by an ESB to count toward achieving the applicable Routine O&M Work ESB Goal, the Developer must have an Accepted Small Business Commitment for the Routine O&M Work to be performed. A "Small Business Commitment" is a portion of the Routine O&M Work, identified by dollar amount and Work area, designated by the Developer for participation by a particular ESB.
 - i. All proposed Small Business Commitments to ESB firms must be submitted to the Department for Acceptance via a "Commitment Confirmation Form". The Commitment Confirmation Form must be Accepted by the Department prior to the ESB commencing work in order for the participation to be counted toward the applicable Routine O&M Work ESB Goal. Once Accepted, Small Business Commitments are enforceable obligations of the Developer under this Agreement. Each ESB firm must be certified for the work to be performed upon submission of the Small Business Commitment.

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- ii. Commitment Confirmation Forms shall be submitted to the Department for Acceptance no later than the 10th Working Day of each month during the Term. The Commitment Confirmation Form must be submitted no earlier than 90 Calendar Days prior to the firm commencing work.
- b. Counting Eligible Participation. Unless otherwise specified in this Appendix C, eligible ESB participation will be counted in accordance with 49 CFR 26.55. ESB participation will be counted in the same manner as DBE participation with the exception that ESB firms do not have work codes and therefore are not limited to performance in certain workareas.
 - i. If the Developer seeks to count participation by an ESB firm engaged in a joint venture, the Developer shall seek Acceptance from the Department of the joint venture's eligible participation by submitting the joint venture agreement explaining the work and management arrangement between the joint venture.
 - ii. The Developer shall only count a reasonable fee for contract-specific services toward achieving the applicable Routine O&M Work ESB Goal. Non-contract specific expenses may not be counted. In the case of temporary employment placement agencies, only the placement fee and fees for a temporary employee that will be specifically and exclusively used for work on the Project shall count toward achieving the applicable Routine O&M Work ESB Goal; the temporary employee's hourly fee will not count.
 - iii. If an ESB is decertified from the ESB program after Acceptance of a Small Business Commitment and the execution of a Subcontract, the Developer may still count the ESB participation toward achieving the applicable Routine O&M Work ESB Goal.
- c. Commercially Useful Function ("CUF") Reviews. The Department applies the DBE requirement from 49 CFR § 26.55 to all ESB firms. The Developer shall monitor all ESB firms to ensure those firms are performing a CUF. The Department shall determine whether an ESB firm has performed a CUF on the Project. If the Department determines that a firm is not performing a CUF pursuant to 49 CFR § 26.55, no work performed by such firm shall count toward achieving the Routine O&M Work ESB Goal.
- d. The use of joint checks to ESBs must be Approved by the Department before they are used to make a payment. The Developer shall request Approval for the use of a joint check in a written letter signed by the ESB and the Developer, stating the reason for the joint checks and the approximate number of checks that will be needed.
- e. Small Business Commitment modifications. The Developer shall not terminate, reduce or otherwise modify the work to be performed under a Small Business Commitment without Acceptance from the Department. If, due to exigent circumstances, it is not possible for the Developer to seek Acceptance prior to termination, reduction or modification, the Developer shall submit to the Department a request for Acceptance within five Calendar Days of the occurrence requiring such action. Requests for Acceptance shall be made upon a form mutually agreed by the Developer and the Department (both acting reasonably).
 - i. Terminations and reductions include instances in which the Developer seeks to perform work originally designated for an ESB Subcontractor with its own forces, those of an Affiliate, a non-ESB firm or with another ESB firm.
 - ii. In order to receive Acceptance of a termination or reduction, the Developer shall, at a minimum, have good cause for the termination or reduction as outlined in 49 CFR § 26(f).
 - iii. Prior to requesting Acceptance of a termination or reduction, the Developer shall provide the firm written notice of the Developer's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the Department. In such notice of intent, the Developer shall provide the firm at least

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five Working Days to respond to the notice and to inform the Department and the Developer of the reasons, if any, why it objects to the proposed termination or reduction and any reasons why it considers that it should not be Accepted. The Developer is not required to provide the five Working Days' written notice in cases where the ESB has provided written notice that it is withdrawing. The notice period may be reduced by the Department in its discretion if required by public necessity. The Developer shall not request Acceptance until the period has passed or been waived.

- iv. Requests for other modifications, such as the addition of Work to be performed by the ESB, shall be made by submitting an updated Commitment Confirmation for Acceptance by the Department.
- v. The Developer shall make good faith efforts to replace any ESB commitment that has been terminated or reduced with another ESB firm as outlined in 49 CFR § 26.53(g).

4. Reporting Requirements

- a. **Monthly Reporting.** In addition to the monthly reporting requirements contained in Section 13 of Schedule 11, the Developer shall, at the same time as complying with such requirements, submit a monthly report (in a form to be agreed between the Parties, both acting reasonably) to the Department for Acceptance during the Operating Period, which shall include the following information:
 - i. **Subcontractor Participation and Payment:** total value of Routine O&M Work to date during the applicable five Contract Year period, a detailed breakdown of all Subcontractors (and, for certainty, this requirement shall apply to all Subcontractors and not just ESB Subcontractors) that have participated on the Project during the five Contract Year period to date. It shall include:
 - 1. firm name;
 - 2. whether the firm is an ESB and the Small Business Commitment amount to the ESB;
 - 3. Subcontract amount; area of work performed; total paid to date to the firm; most recent invoice date and amount; and most recent payment date and amount.
 - 4. Identification of all subcontracting parties and the higher and lower tiered contracts associated with the Subcontract.
 - ii. **Outreach and Upcoming Opportunities:** a description of work areas on the Project for which the Developer is seeking ESB Subcontractors. The description shall also include upcoming outreach and training events if applicable.
 - iii. **Compliance Issues Report:** details of any issues that the Department should be aware of regarding ESB participation on the Project. This may include payment disputes, non-performance by ESBs, and significant scope of work changes, potential CUF concerns or other performance issues.
- b. **Annual Progress Review Report:** In addition to the monthly report required to be submitted in the relevant month pursuant to Section 4.a. of Part I of this Appendix C, the Developer shall submit an annual report (in a form to be agreed between the Parties, both acting reasonably) to the Department for Approval no later than 30 Calendar Days before the end of each Contract Year and prior to each annual progress review conducted in respect of such Contract Year pursuant to Section 1.2.6 of this Schedule 15, which report shall include the following information:
 - i. **Bidders List:** The Developer shall list all firms that submitted a quote to participate on the Project. The list shall include a description of the work for

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- which the bid was submitted, whether the firm is a DBE or ESB, and whether they were selected for the work.
- ii. Participation Assessment: A summary and assessment of ESB participation of the past Contract Year and total to date progress made toward achieving the applicable ESB Routine O&M Work Goal.
 - iii. Summary of solicitation and good faith efforts to date.
 - iv. Anticipated ESB participation for the remainder of the current five Contract Year period.
 - v. If necessary, a request for amending the ESB Routine O&M Work Plan for the applicable period if the Developer believes it is not on target to meet the applicable goal or if the Developer has not met other commitments detailed in the plan. The request shall include a revised schedule for attaining the goal and a description of the Developer's approach to making up the participation.
- c. Department Annual Assessment: Within 30 Calendar Days after each Annual Performance Progress Review conducted pursuant to Section 1.2.6 of this Schedule 15, the Department shall provide a written determination on the Developer's progress toward achieving the Routine O&M Work ESB Goal for the applicable period. Progress will be based on the Developer's demonstrated good faith efforts, compliance with its five-year Routine O&M Work ESB Participation Plan, and meeting the schedules and milestones described in the plan.
 - d. Five-Year Period Final Report: The Developer shall submit, for Approval by the Department, its final report (in a form to be agreed between the Parties, both acting reasonably) on ESB participation at the end of each sequential five Contract Year period within 30 Calendar Days after the end of the final Contract Year in such period. The final report shall include a summary report of total participation toward achieving the Routine O&M Work ESB Goal for the applicable period. The report shall include the Small Business Commitment amount, the actual dollar amount paid to each ESB firm, the eligible participation amount, and area of work performed.
 - e. Department Five-Year Report: Following Approval of the Developer's five-year period final report, the Department will evaluate the data to determine, and issue a written report setting out its determination of, whether the Developer has (i) achieved the Routine O&M Work ESB Goal for the applicable period and (ii) if the goal has not been met, demonstrated that it has made good faith efforts to achieve the goal.

Part II. Renewal Work DBE Goals and Requirements

1. Renewal Work DBE Goal
 - a. The Department shall establish a Renewal Work DBE Goal to apply during each sequential five Contract Year period during the Operating Period, with the first such period being the Contract Year during which the Substantial Completion Date occurs and the immediately following four Contract Years. Each goal will be set in accordance with 49 CFR § 26.45(e)(3) and based on information contained in submittals required to be submitted by the Developer pursuant to Schedule 8 and Schedule 11.
 - b. The Developer shall participate in a meeting with the Department at least 180 Calendar Days prior to the commencement of each new five Contract Year period to discuss the establishment of a new Renewal Work DBE Goal. At the meeting, the Developer may provide data to supplement its most recent Maintenance Management Plan. At the request of the Department, the Developer shall participate in any consultation and public participation efforts taken by the Department pursuant to 49 CFR 26.45(g).
 - c. The Department shall notify the Developer of the applicable Renewal Work DBE Goal for the upcoming five Contract Year period at least 60 Calendar Days prior to the commencement of the new five Contract Year period.

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- d. In accordance with Section 6.2.2.e of this Schedule 15, the Developer shall make good faith efforts to achieve the Renewal Work DBE Goal applicable to each sequential five Contract Year period during the Operating Period. Good faith efforts means all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to achieve the goal, even if not successful. For additional guidance on how the Department will determine whether or not it considers that the Developer has made good faith efforts, see 49 CFR Part 26 Appendix A.
2. Five-year Period Renewal Work DBE Participation Plan: Commencing with the Contract Year in which Substantial Completion occurs, the Developer shall submit the following information for Approval with its Maintenance Management Plan at the commencement of each new five-year period:
 - a. An estimated schedule for achievement of the Renewal Work DBE Goal applicable to the relevant five Contract Year period. The Developer shall outline the expected participation toward achieving the goal. This outline shall set the framework for achieving the Renewal Work DBE Goal during such period.
 - b. A list of the areas of Work the Developer has identified for potential DBE participation and approximate dollar value of each area.
 - c. The strategic approach for integrating DBE participation into the overall approach to subcontracting, including discussion of how the Developer will communicate opportunities to DBE firms, create a transparent process, unbundle work to establish opportunities for DBE firms, or other actions to secure DBE participation.
 - d. A description of how participation will be monitored and tracked and the internal procedures through which the Developer will ensure the goal is met. This will include distribution of goal responsibilities to Subcontractors, collecting data on Subcontractor participation and performance, and ensuring only valid performance is counted.
 - e. Methods for ensuring prompt payment to all Subcontractors (for certainty, not only DBE Subcontractors) performing Renewal Work during the Operating Period, including a description as to whether and how the Developer will implement any additional prompt payment requirements, beyond those mandated in Section 17.5 of the Project Agreement, as well as the process by which the Developer will track and monitor the following: invoicing by Subcontractors; prompt payment to Subcontractors; and release of retainage. This portion of the plan shall include any efforts that the Developer and Subcontractors that are not themselves DBEs will make to assist with mobilization efforts and early purchase of materials, or any other payment measures that will aid the viability of small business participation in the Work.
 3. Commitments and Counting
 - a. Commitments. In order for the work performed by a DBE to count toward achieving the Renewal Work DBE Goal, the Developer must have an Accepted Small Business Commitment for the Renewal Work to be performed. A "Small Business Commitment" is a portion of the Renewal Work, identified by dollar amount and Work area, designated by the Developer for participation by a particular DBE.
 - i. All proposed Small Business Commitments to DBE firms must be submitted to the Department for Acceptance via a "Commitment Confirmation Form." The Commitment Confirmation Form must be Accepted by the Department prior to the DBE commencing work in order for the participation to be counted toward the Renewal Work DBE goal. Once Accepted, Small Business Commitments are enforceable obligations from the Developer to the Department under this Agreement. Each DBE firm must be certified for the work to be performed upon submission of the Small Business Commitment.

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- ii. For Renewal Work projects of more than \$1 million, the Developer shall submit a list of commitments along with a Commitment Confirmation Form for each listed firm at least two weeks prior to the commencement of construction on the Renewal Work project.
 - iii. For all other DBE commitments, Commitment Confirmation Forms shall be submitted to the Department for Acceptance no later than the 10th Working Day of each month during the Term. The Commitment Confirmation Form must be submitted no earlier than 90 Calendar Days prior to the firm commencing work.
 - b. Counting Eligible Participation. Unless otherwise specified in this Appendix C, eligible DBE participation will be counted in accordance with 49 CFR 26.55.
 - i. If the Developer seeks to count participation by a DBE firm engaged in a joint venture, the Developer shall seek Acceptance from the Department of the joint venture's eligible participation by submitting the joint venture agreement explaining the work and management arrangement between the joint venture.
 - ii. In accordance with 49 CFR 26.55(2), the Developer shall only count a reasonable fee for contract-specific services toward achieving the Renewal Work DBE Goal. Non-contract specific expenses may not be counted. In the case of temporary employment placement agencies, only the placement fee and fees for a temporary employee that will be specifically and exclusively used for work on the Project shall count toward achieving the relevant Renewal Work DBE Goal; the temporary employee's hourly fee will not count.
 - iii. Work by a DBE firm that was not certified for the work to be performed upon execution of its Subcontract will not count toward achieving the relevant goal. If a DBE is decertified from the DBE program after Acceptance of a Small Business Commitment and the execution of a Subcontract, the Developer may still count the DBE participation toward achieving the Renewal Work DBE Goal.
 - iv. If the Developer seeks to count participation by a DBE firm engaged in a joint venture, the Developer shall seek Acceptance from the Department of the joint venture's eligible participation by submitting the joint venture agreement explaining the work and management arrangement between the joint venture.
 - c. Commercially Useful Function ("CUF") Reviews. The Developer shall monitor all DBE firms to ensure those firms are performing a CUF. The Department shall determine whether a DBE firm has performed a CUF on the Project. If it determines that a firm is not performing a CUF pursuant to 49 CFR § 26.55, no work performed by such firm shall count toward achieving the goal.
 - d. The use of joint checks to DBEs must be Approved by the Department before they are used to make a payment. The Developer shall request Approval for the use of a joint check in a written letter signed by the DBE and the Developer, stating the reason for the joint checks and the approximate number of checks that will be needed.
 - e. Small Business Commitment modifications. The Developer shall not terminate, reduce or modify the work to be performed under a Small Business Commitment without Acceptance from the Department. If, due to exigent circumstances, it is not possible for the Developer to seek Acceptance prior to termination, reduction or modification, the Developer shall submit to the Department a request for Acceptance within five Calendar Days of the occurrence requiring such action. Requests for Acceptance shall be made upon a form mutually agreed by the Developer and the Department (both acting reasonably).
 - i. Terminations and reductions include instances in which the Developer seeks to perform work originally designated for a DBE Subcontractor with its own forces, those of an Affiliate, a non-DBE firm or with another DBE firm.

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- ii. In order to receive Acceptance of a termination or reduction, the Developer shall, at a minimum, have good cause for the termination or reduction as outlined in 49 CFR § 26 (f).
- iii. Prior to requesting Acceptance of a termination or reduction, the Developer shall provide the firm written notice of the Developer's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the Department. In such notice of intent, the Developer shall provide the firm at least five Working Days to respond to the notice and to inform the Department and the Developer of the reasons, if any, why it objects to the proposed termination or reduction and any reasons why it considers that it should not be Accepted. The Developer is not required to provide the five Working Days' written notice in cases where the DBE has provided written notice that it is withdrawing. The notice period may be reduced by the Department in its discretion if required by public necessity. The Developer shall not request Acceptance until the period has passed or been waived.
- iv. Requests for other modifications, such as the addition of Work to be performed by the DBE, shall be made by submitting an updated Commitment Confirmation for Acceptance by the Department.
- v. The Developer shall make good faith efforts to replace any DBE commitment that has been terminated or reduced with another DBE firm as outlined in 49 CFR § 26.53(g).

4. Reporting Requirements

- a. Monthly Reporting. In addition to the monthly reporting requirements contained in Section 13 of Schedule 11, the Developer shall, at the same time as complying with such requirements, submit a monthly report (in a form to be agreed between the Parties, both acting reasonably) to the Department for Acceptance during the Operating Period which shall include the following information:
 - i. Subcontractor Participation and Payment: total value of (1) Renewal Work and (2) other O&M Work After Construction to date during the applicable five Contract Year period; a detailed breakdown of all Subcontractors (and, for certainty, this requirement shall apply to all Subcontractors and not just DBE Subcontractors) that have participated on the Project during the five Contract Year period to date, separated by these same two categories of Work. It shall include:
 1. firm name;
 2. whether the firm is a DBE and the Small Business Commitment amount to the DBE, and whether the firm is a Small Subcontractor or an ESB;
 3. Subcontract amount; area of work performed; total paid to date to the firm; most recent invoice date and amount; and most recent payment date and amount;
 4. identification of all parties to the relevant Subcontract and the higher and lower tiered Subcontracts associated with the Subcontract; and
 5. any other relevant information to facilitate the Enterprises' assessment of compliance by the Developer with Section 17.5 of the Project Agreement in relation to the Subcontract.
 - ii. Outreach and Upcoming Opportunities: a description of work areas on the Project for which the Developer is seeking DBE Subcontractors. The description shall also include upcoming outreach and training events if applicable.
 - iii. Compliance Issues Report: details of any issues that the Department should be aware of regarding DBE participation on the Project. This may include payment

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disputes, non-performance by DBEs, and significant scope of work changes, potential CUF concerns or other performance issues.

- b. Annual Progress Review Report: In addition to the monthly report required to be submitted in the relevant month pursuant to Section 4.a of Part II of this Appendix C, the Developer shall submit an annual report (in a form to be agreed between the Parties, both acting reasonably) to the Department for Approval no later than 30 Calendar Days before the end of each Contract Year and prior to the annual progress review conducted in respect of such Contract Year pursuant to Section 1.2.6 of this Schedule 15, which shall include the following information:
 - i. Bidders List: The Developer shall list all firms that submitted a quote to participate on the Project. The list shall include a description of the work for which the bid was submitted, whether the firm is a DBE or ESB, and whether they were selected for the work.
 - ii. Participation Assessment: A summary and assessment of DBE participation of the past Contract Year and total to date progress made toward achieving the applicable Renewal Work DBE Goal.
 - iii. Summary of solicitation and good faith efforts to date.
 - iv. Anticipated DBE participation for the remainder of the current five Contract Year period.
 - v. If necessary, a request for amending the DBE Renewal Work Plan for the applicable period if the Developer believes it is not on target to meet the applicable goal or if the Developer has not met other commitments detailed in the plan. The request shall include a revised schedule for attaining the goal and a description of the Developer's approach to making up the participation.
- c. Department Annual Assessment: Within 30 Calendar Days after each Annual Performance Progress Review conducted pursuant to Section 1.2.6 of this Schedule 15, the Department shall provide a written determination on the Developer's progress toward achieving the Renewal Work DBE Goal for the applicable period. Progress will be based on the Developer's demonstrated good faith efforts, compliance with its five-year Renewal Work DBE Participation Plan, and meeting the schedules and milestones described in the plan.
- d. Five-year Period Final Report: The Developer shall submit, for Approval by the Department, its final report (in a form to be agreed between the Parties, both acting reasonably) on DBE participation at the end of each sequential five Contract Year period within 30 Calendar Days after the end of the final Contract Year in such period. The final report shall include a summary report of total participation toward achieving the Renewal Work DBE Goal for the applicable period. The report shall include the Small Business Commitment amount, the actual dollar amount paid to each DBE firm, the eligible participation amount, and area of work performed.
- e. Department Five-year Report: Following Approval of the Developer's five-year period final report, the Department will evaluate the data to determine, and issue a written report setting out its determination of, whether the Developer has (i) achieved the Renewal Work DBE Goal for the applicable period and (ii) if the goal has not been met, demonstrated that it has made good faith efforts to achieve the goal.
- f. Uniform Report of DBE Awards or Commitments and Payments Form: By May 15 and November 15 of each year, the Developer shall submit to the Department for Acceptance a Uniform Report of DBE Awards or Commitments and Payments Form that has been completed in accordance with Appendix B of 49 CFR Part 26.

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Part III. On-the-Job Training Goals and Requirements

1. On-the-Job Training (OJT) Goal
 - a. The Department shall establish a Renewal Work OJT Goal for every Contract Year commencing with the Contract Year in which Substantial Completion occurs.
 - b. The Department shall notify Developer of its Renewal Work OJT goal within 30 Calendar Days of the submission date of the Developer's Maintenance Management Plan for the applicable upcoming Contract Year and provide Developer with a reasonable opportunity to provide comments on such goal. Each goal will be set in accordance with the then-current CDOT OJT Special Standard Provision and based on the information contained in submittals required to be submitted by the Developer pursuant to Schedule 8 and Schedule 11.
2. Counting Goal Participation
 - a. OJT participation that counts toward satisfying the applicable Renewal Work OJT Goal shall be calculated based on the aggregate number of employment hours on Renewal Work worked by trainees and apprentices who satisfy the requirements below.
 - b. The employment of the following categories of individuals by the Developer (and Subcontractors) shall count towards achieving the applicable Renewal Work OJT Goal:
 - i. Trainees that are enrolled with a program approved by the Department and FHWA; and/or
 - ii. Apprentices that are enrolled and duly registered in a U.S. Department of Labor approved program.
 - c. In addition, a proposed apprentice or trainee must have been Approved by the Department for such individual's participation to be counted toward achieving the applicable Renewal Work OJT Goal. Approval must occur before employment hours can be counted toward the goal. To obtain Approval for the apprentice or trainee, the Developer must submit the following to the Department for each apprentice and trainee:
 - i. Evidence of the registration of the trainee or apprentice into the approved training program, and
 - ii. The completed CDOT form for each trainee or apprentice.
 - d. The employment of a trainee/apprentice in a skilled craft will not be counted toward the applicable Renewal Work OJT Goal if that individual has already worked or been paid at a professional/journey level status for more than 6 months prior to Approval of their participation as a trainee/apprentice.
 - e. Before training begins, the Developer shall provide each trainee with a copy of the approved training program, pay scale, pension, and retirement benefits, health and disability benefits, promotional opportunities, other employer policies and compliant procedures.
3. Reporting Requirements
 - a. Disclosure of Information: In order to monitor and enforce the requirements of this Schedule 15, the Developer shall disclose employment records for trainees and apprentices. The Department may verify employment records and information by reviewing personnel files as well as interviewing any individual employed by the Developer or any Subcontractor.
 - b. Records: The Developer shall keep records regarding the progress on achieving the applicable Renewal Work OJT Goal, including Subcontractor participation.

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- c. **Monthly Reports:** In addition to the monthly reporting requirements contained in Section 13 of Schedule 11, the Developer shall, at the same time as complying with such requirements, submit a monthly report (in a form to be agreed between the Parties, both acting reasonably) to the Department for Acceptance during the Operating Period, which shall include the following information:
- i. Total Renewal Work employment hours expended during the applicable Contract Year to date separated into skilled craft employment hours and professional services employment hours.
 - ii. Total employment hours for apprentices/trainees expended during the applicable Contract Year to date.
 - iii. If the projected employment hours are less than the Renewal Work OJT Goal, the Developer shall provide an explanation detailing how it intends to achieve the then applicable Renewal Work OJT Goal, including a description of activities and other proactive measures intended to facilitate increased OJT participation.
 - iv. A list of current and new (i.e. since the last report) trainees/apprentices by providing full name, employer, description of services or applicable work code, start date, skilled craft program registered in (including verification of enrollment) for trainees apprentices, total hours worked in current month, pay rate, total hours worked to date on the Project, supervisor full name, and a description of the training and performance level.
 - v. Any performance problems with the trainee/apprentice and how the problems were resolved, including any reasons for participants leaving the Project.
 - vi. A list of trainees/apprentices that have graduated or successfully completed their training program, and last date worked on site.
 - vii. A signature by Developer certifying the information in the report is accurate.
- d. **Department Report:** Following Acceptance of the final monthly report for the applicable Calendar Year, the Department will evaluate the data to determine, and issue a written report setting out its determination of, whether the Developer has achieved the Renewal Work OJT Goal for the applicable period.

Appendix D
Davis-Bacon Wage Decisions

The wage decisions provided in this Appendix D shall apply for the duration of the Construction Period. Those wage decisions are:

- Minimum Wages, Colorado, U.S. Department of Labor Decision **No. CO170016** dated June 9, 2017, which applies to Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, and Park counties.
- Minimum Wages, Colorado, U.S. Department of Labor Decision **No. CO170019** dated September 22, 2017, which applies Denver and Douglas counties.

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Decision Nos. CO170016 dated January 06, 2017 supersedes Decision Nos. CO160016 dated January 08, 2016.		<u>Modifications</u>			<u>ID</u>
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.		<u>MOD Number</u>	<u>Date</u>	<u>Page Number(s)</u>	
		1	04-07-17	1	1
		2	06-09-17	1	2
General Decision No. CO170016 applies to the following counties: Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, and Park counties.					
General Decision No. CO170016 The wage and fringe benefits listed below reflect collectively bargained rates.					
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod	
	ELECTRICIAN (Traffic Signalization Only):				
1000	Clear Creek	29.60	10.77		1
	POWER EQUIPMENT OPERATOR:				
	Drill Rig Caisson				
1001	Smaller than Watson 2500 and similar	27.60	10.10		2
1002	Watson 2500 similar or larger	27.92	10.10		2
	Crane (50 tons and under)				
1003	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	27.75	10.10		2
	Crane (51 - 90 tons)				
1004	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	27.92	10.10		2
	Crane (91 - 140 tons)				
1005	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	28.55	10.10		2
1006	Scraper				
1007	Single bowl under 40 cubic yards	27.75	10.10		2
1008	40 cubic yards and over	27.92	10.10		2

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General Decision No. CO170016				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
	CARPENTER:			
	Excludes Form Work			
1009	Adams	16.61	3.88	
1010	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	19.27	5.08	
	Form Work Only			
1011	Adams	16.78	3.57	
1012	Broomfield, Clear Creek, Elbert, Gilpin	19.11	5.46	
1013	Jefferson	16.88	3.81	
1014	Park	17.28	5.38	
	CEMENT MASON/CONCRETE FINISHER:			
1015	Adams	16.05	3.00	
1016	Arapahoe	18.70	3.85	
1017	Broomfield, Clear Creek, Elbert, Gilpin	18.37	3.00	
1018	Jefferson	18.02	3.42	
1019	Park	17.09	2.85	
	ELECTRICIAN:			
	Excludes Traffic Signal Installation			
1020	Adams	31.00	14.01	
1021	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	35.13	6.83	
	Traffic Signalization Electrician			
1022	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	27.25	7.10	
1023	Jefferson	26.78	5.44	
	Traffic Signalization Groundsman			
1024	Adams	13.96	2.80	
1025	Arapahoe, Broomfield, Elbert, Gilpin, Park	15.24	3.81	
1026	Clear Creek	15.70	2.14	
1027	Jefferson	15.19	4.72	

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Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
1028	FENCE ERECTOR	13.02	3.20	
1029	FORM WORKER – Arapahoe	15.30	3.90	
	GUARDRAIL INSTALLER:			
1030	Adams	12.89	3.45	
1031	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
	Painter			
1032	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	12.62	3.21	
1033	Jefferson	14.21	3.21	
	IRONWORKER:			
	Reinforcing			
1034	Adams	22.14	0.77	
1035	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	16.69	5.45	
1036	Park	19.98	2.89	
1037	Structural	18.22	6.01	
	LABORER:			
	Asphalt Raker			
1038	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	16.29	4.25	
1039	Park	17.41	1.86	
1040	Asphalt Shoveler	21.21	4.25	
1041	Asphalt Spreader	18.58	4.65	
	Common or General			
1042	Adams	16.29	4.25	
1043	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	16.67	4.27	
1044	Jefferson	16.51	4.27	
1045	Park	15.64	2.46	

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Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	Concrete Saw (Hand Held)			
1046	Adams	16.29	5.20	
1047	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	16.29	6.14	
	Landscape and Irrigation			
1048	Adams, Arapahoe, Broomfield, Elbert, Gilpin, Jefferson, Park	12.26	3.16	
1049	Clear Creek	14.98	3.16	
	Mason Tender - Cement/Concrete			
1050	Adams	17.71	2.83	
1051	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	16.96	4.04	
1052	Jefferson	16.29	4.25	
1053	Park	15.08	3.10	
1054	Pipelayer	13.55	2.41	
	Traffic Control (Flagger)			
1055	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin	9.55	3.05	
1056	Jefferson	9.73	3.05	
1057	Park	9.42	3.21	
	Traffic Control (Sets Up/Moves Barrels, Cones, Install Signs, Arrow Boards and Place Stationary Flags)			
1058	Adams, Arapahoe, Broomfield, Elbert, Gilpin, Jefferson	12.43	3.22	
1059	Clear Creek	13.14	3.20	
1060	Park	12.76	3.20	
1061	PAINTER (Spray Only)	16.99	2.87	

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Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1062	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	22.67	8.75	
1063	Park	22.67	8.72	
1064	Asphalt Paver	24.97	6.13	
	Asphalt Roller			
1065	Adams	24.20	7.70	
1066	Arapahoe	22.68	8.72	
1067	Broomfield, Clear Creek, Elbert, Gilpin	23.41	7.67	
1068	Jefferson	22.84	7.69	
1069	Park	22.84	8.72	
	Asphalt Spreader			
1070	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	22.67	8.67	
1071	Jefferson	23.34	8.06	
1072	Backhoe/Trackhoe			
1073	Adams	20.31	4.24	
1074	Arapahoe	24.59	6.24	
1075	Broomfield, Clear Creek, Elbert, Gilpin	22.19	6.48	
1076	Jefferson	21.99	5.60	
1077	Park	20.81	6.58	

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	POWER EQUIPMENT OPERATOR (con't):			
	Bobcat/Skid Loader			
1078	Adams, Broomfield, Clear Creek, Elbert, Gilpin	15.37	4.28	
1079	Arapahoe	18.23	4.28	
1080	Jefferson	16.85	4.28	
1081	Park	22.46	0.00	
1082	Boom	22.67	8.72	
	Broom/Sweeper			
1083	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Park	22.70	8.07	
1084	Arapahoe	22.67	8.73	
1085	Jefferson	22.18	8.36	
	Bulldozer			
1086	Adams	25.20	6.72	
1087	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	26.90	5.59	
1088	Concrete Pump	21.60	5.21	
	Crane			
1089	Adams, Park	22.82	8.72	
1090	Jefferson	23.55	6.68	
	Drill			
1091	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	20.48	4.71	
1092	Jefferson	20.65	5.74	
1093	Forklift	15.91	4.68	

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	POWER EQUIPMENT OPERATOR (con't):			
	Grader/Blade			
1094	Adams	23.94	8.23	
1095	Arapahoe	22.67	8.72	
1096	Broomfield, Clear Creek, Elbert, Gilpin, Park	23.90	7.93	
1097	Jefferson	23.28	7.73	
1098	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1099	Adams	23.09	8.72	
1100	Arapahoe	26.80	4.84	
1101	Broomfield, Clear Creek, Elbert, Gilpin	23.20	8.33	
1102	Jefferson	23.06	7.76	
1103	Park	22.67	8.72	
	Mechanic			
1104	Adams	22.82	8.72	
1105	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	24.04	7.35	
1106	Jefferson	23.56	8.72	
	Oiler			
1107	Adams, Jefferson	21.97	8.72	
1108	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	23.73	8.41	
	Roller/Compactor (Dirt and Grade Compaction)			
1109	Adams	16.70	3.30	
1110	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson	20.30	5.51	
1111	Park	16.52	3.13	
1112	Rotomill	16.22	4.41	

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The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't):			
	Screed			
1113	Adams	27.89	3.50	
1114	Arapahoe	22.67	8.72	
1115	Broomfield, Clear Creek, Elbert, Gilpin	24.67	6.02	
1116	Jefferson	22.64	8.43	
1117	Park	20.36	3.04	
1118	Tractor	13.13	2.95	
	TRUCK DRIVER:			
	Distributor			
1119	Adams	15.80	5.27	
1120	Arapahoe	19.62	5.27	
1812	Broomfield, Clear Creek, Elbert, Gilpin, Park	18.19	5.27	
1121	Jefferson	19.46	6.04	
	Dump Truck			
1122	Adams	16.68	5.27	
1123	Arapahoe	18.94	5.27	
1124	Broomfield, Clear Creek, Elbert, Gilpin	16.47	5.27	
1125	Jefferson	16.97	4.78	
1126	Park	15.40	3.21	
	Lowboy Truck			
1127	Adams, Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	17.25	5.27	
1128	Jefferson	19.80	6.42	
1129	Mechanic	26.48	3.50	
	Multi-Purpose Specialty and Hoisting Truck			
1130	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Park	17.49	3.17	
1131	Arapahoe	15.79	2.48	
1132	Jefferson	15.13	3.89	

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The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Semi/Trailer Truck (Includes Pickup and Pilot Car)			
1133	Adams, Broomfield, Clear Creek, Elbert, Gilpin, Jefferson, Park	18.39	4.13	
1134	Arapahoe	16.00	2.60	
	Single Axle (Includes Pickup and Pilot Car)			
1135	Adams, Jefferson	13.93	3.68	
1136	Arapahoe	15.10	3.77	
1137	Broomfield, Clear Creek, Elbert, Gilpin, Park	14.74	3.68	
1138	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1139	Adams	17.50	5.19	
1140	Arapahoe, Broomfield, Clear Creek, Elbert, Gilpin, Park	19.36	4.07	
1141	Jefferson	17.57	5.27	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

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WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program.

If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
 Wage and Hour Division
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
 U.S. Department of Labor
 200 Constitution Avenue, N.W.
 Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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Decision Nos. CO170019 dated January 06, 2017 supersedes Decision Nos. CO160019 dated January 08, 2016.		<u>Modifications</u>		<u>ID</u>
		<u>MOD Number</u>	<u>Date</u>	<u>Page Number(s)</u>
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.		1	01/27/17	1
		2	06/09/17	1 & 2
		3	09/22/17	1 & 2
General Decision No. CO170019 applies to the following counties: Denver and Douglas counties.				
General Decision No. CO170019 The wage and fringe benefits listed below reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
1279	CARPENTER (Form Work Only)	25.50	7.47	1
	TRAFFIC SIGNALIZATION:			
	Traffic Signal Installation			
1280	Zone 1	26.42	4.75% + 8.68	
1281	Zone 2	29.42	4.75% + 8.68	
	<u>Traffic Installer Zone Definitions</u> Zone 1 – Within a 35 mile radius measured from the addresses of the following cities: Colorado Springs - Nevada & Bijou Denver - Ellsworth Avenue & Broadway Ft. Collins - Prospect & College Grand Junction - 12th & North Avenue Pueblo - I-25 & Highway 50 Zone 2 - All work outside these areas.			
	POWER EQUIPMENT OPERATOR:			
	Hydraulic Backhoe			
1282	Wheel Mounted, under ¾ yds.	27.60	10.10	3
1283	Backhoe/Loader combination	27.60	10.10	3
	Drill Rig Caisson			
1284	Smaller than Watson 2500 and similar	27.60	10.10	3
1285	Watson 2500 similar or larger	27.92	10.10	3
	Loader			
1286	Up to and including 6 cubic yards	27.60	10.10	3
1287	Denver County - Under 6 cubic yards	27.60	10.10	3

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General Decision No. CO170019				
The wage and fringe benefits listed below reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
1288	Denver County - Over 6 cubic yards	27.75	10.10	3
	Motor Grader			
1289	Douglas county - Blade Rough	27.60	10.10	3
1290	Douglas county - Blade Finish	27.92	10.10	3
	Crane			
1291	50 tons and under	27.75	10.10	3
1292	51 to 90 tons	27.92	10.10	3
1293	91 to 140 tons	28.55	10.10	3
	Scraper			
1294	Single bowl under 40 cubic yards	27.75	10.10	3
1295	40 cubic yards and over	27.92	10.10	3
General Decision No. CO170019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
1296	CARPENTER (Excludes Form Work)	19.27	5.08	
	CEMENT MASON/CONCRETE FINISHER:			
1297	Denver	20.18	5.75	
1298	Douglas	18.75	3.00	
1299	ELECTRICIAN (Excludes Traffic Signal Installation)	35.13	6.83	
1300	FENCE ERECTOR (Excludes Link/Cyclone Fence Erection)	13.02	3.20	
1301	GUARDRAIL INSTALLER	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
	Painter			
1302	Denver	12.62	3.21	
1303	Douglas	13.89	3.21	
	IRONWORKERS:			
1304	Reinforcing (Excludes Guardrail Installation)	16.69	5.45	
1305	Structural (Includes Link/Cyclone Fence Erection), (Excludes Guardrail Installation)	18.22	6.01	

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The wage and fringe benefits listed below do not reflect collectively bargained rates.				
Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	LABORERS:			
1306	Asphalt Raker	16.29	4.25	
1307	Asphalt Shoveler	21.21	4.25	
1308	Asphalt Spreader	18.58	4.65	
	Common or General			
1309	Denver	16.76	6.77	
1310	Douglas	16.29	4.25	
1311	Concrete Saw (Hand Held)	16.29	6.14	
1312	Landscape and Irrigation	12.26	3.16	
	Mason Tender - Cement/Concrete			
1313	Denver	16.96	4.04	
1314	Douglas	16.29	4.25	
	Pipelayer			
1315	Denver	13.55	2.41	
1316	Douglas	16.30	2.18	
	Traffic Control			
1317	Flagger	9.55	3.05	
1318	Sets Up/Moves Barrels, Cones, Install Signs, Arrow Boards and Place Stationary Flags, (Excludes Flaggers)	12.43	3.22	
	PAINTER:			
1319	Spray Only	16.99	2.87	
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1320	Denver	22.67	8.72	
1321	Douglas	23.67	8.47	
	Asphalt Paver			
1322	Denver	24.97	6.13	
1323	Douglas	25.44	3.50	

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Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Asphalt Roller			
1324	Denver	23.13	7.55	
1325	Douglas	23.63	6.43	
1326	Asphalt Spreader	22.67	8.72	
	Backhoe/Trackhoe			
1327	Douglas	23.82	6.00	
1328	Bobcat/Skid Loader	15.37	4.28	
1329	Boom	22.67	8.72	
	Broom/Sweeper			
1330	Denver	22.47	8.72	
1331	Douglas	22.96	8.22	
1332	Bulldozer	26.90	5.59	
1333	Concrete Pump	21.60	5.21	
	Drill			
1334	Denver	20.48	4.71	
1335	Douglas	20.71	2.66	
1336	Forklift	15.91	4.68	
	Grader/Blade			
1337	Denver	22.67	8.72	
1338	Guardrail/Post Driver	16.07	4.41	
	Loader (Front End)			
1339	Douglas	21.67	8.22	
	Mechanic			
1340	Denver	22.89	8.72	
1341	Douglas	23.88	8.22	

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General Decision No. CO170019				
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Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Oiler			
1342	Denver	23.73	8.41	
1343	Douglas	24.90	7.67	
	Roller/Compactor (Dirt and Grade Compaction)			
1344	Denver	20.30	5.51	
1345	Douglas	22.78	4.86	
1346	Rotomill	16.22	4.41	
	Screed			
1347	Denver	22.67	8.38	
1348	Douglas	29.99	1.40	
1349	Tractor	13.13	2.95	
	TRAFFIC SIGNALIZATION:			
	Groundsman			
1350	Denver	17.90	3.41	
1351	Douglas	18.67	7.17	
	TRUCK DRIVER:			
	Distributor			
1352	Denver	17.81	5.82	
1353	Douglas	16.98	5.27	
	Dump Truck			
1354	Denver	15.27	5.27	
1355	Douglas	16.39	5.27	
1356	Lowboy Truck	17.25	5.27	
1357	Mechanic	26.48	3.50	
	Multi-Purpose Specialty & Hoisting Truck			
1358	Denver	17.49	3.17	
1359	Douglas	20.05	2.88	

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Code	Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Pickup and Pilot Car			
1360	Denver County	14.24	3.77	
1361	Douglas County	16.43	3.68	
1362	Semi/Trailer Truck	18.39	4.13	
1363	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1364	Denver County	26.27	5.27	
1365	Douglas County	19.46	2.58	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

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 Washington, DC 20210

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END OF GENERAL DECISION NO. CO170019

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Appendix E
Executive Order No. 11246

The following clauses from Executive Order No. 11246 shall be included in all Subcontracts without modification except as appropriate to identify the Subcontractor who will be subject to its provisions in place of "Developer":

1. Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. Developer will, in all solicitations or advancements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. Developer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Developer's legal duty to furnish information.
4. Developer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of Developer's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. Developer will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. Developer will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of Developer's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. Developer will include the provisions of Sections 1 to 8 of this Appendix E in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued

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pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Developer will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Developer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Developer may request the United States to enter into such litigation to protect the interests of the United States."

**Appendix F
 CDOT’s Special Standard Provision for**

“Affirmative Action Requirements Equal Employment Opportunity”

A. AFFIRMATIVE ACTION REQUIREMENTS

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

- i. The Developer acknowledges the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” set out in this Appendix E.
- ii. The goals and timetables for minority and female participation, expressed in percentage terms for the Developer’s aggregate workforce in each trade on all construction work in the covered area are as follows:

Goals and Timetable for Minority Utilization

TIMETABLE - UNTIL FURTHER NOTICE			
Economic Area	Standard Metropolitan Statistical Area (SMSA)	Counties Involved	Goal
157 (Denver)	2080 Denver-Boulder	Adams, Arapahoe, Boulder, Denver, Douglas, Gilpin, Jefferson.....	13.8%
GOALS AND TIMETABLES FOR FEMALE UTILIZATION			
Until Further Notice.....			6.9% -- Statewide

These goals are applicable to all the Developer’s Construction Work performed in the covered area. If the Developer 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 Developer also is subject to the goals for both its Federally involved and non- Federally involved construction.

The Developer’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. 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 Developer shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Developer’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Par 60-4. Compliance with the goals will be measured against the total work hours performed.

- iii. The Developer shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 Working Days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; 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.
- iv. As used in this specification, and in the contract resulting from this solicitation, the “covered area” is the county or counties shown on the Invitation for Bids and on the

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plans. In cases where the work is in two or more counties covered by differing percentage goals, the highest percentage will govern.

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS

- i. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) 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:
 1. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 2. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 3. 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
 4. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- ii. Whenever the Developer, 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.
- iii. If the Developer 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. The Developer must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. If the Developer is participating in an approved Plan it is 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 toward a goal in an approved Plan does not excuse any covered contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- iv. The Developer shall implement the specific affirmative action standards provided in paragraphs vii A through P of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Developer should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally assisted construction

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contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any office of Federal Contract Compliance Programs Office or from Federal procurement contracting officers. The Developer is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

- v. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Developer has a collective bargaining agreement, to refer either minorities or women shall excuse the Developer's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- vi. 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 Developer during the training period, and the Developer 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.
- vii. The Developer shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Developer's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Developer 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 Developer's employees are assigned to work. The Developer shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Developer'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 Developer or its union have employment opportunities available, and maintain a record of the organization's 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 of community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Developer by the union or, if referred, not employed by the Developer, this shall be documented in the file with the reason therefor, along with whatever additional actions the Developer may have taken.
 - D. Provide immediate written notification to the Director when the union with which the Developer has a collective bargaining agreement has not referred to the Developer a minority person or woman sent by the Developer, or when he the Developer has other information that the union referral process has impeded the Developer'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 Developer's employment needs, especially those programs funded or approved by the Department of Labor. The Developer shall provide notice of these programs to the sources compiled under paragraph vii.B of these specifications.

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- F. Disseminate the Developer's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Developer 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 Developer's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- G. Review, at least annually, the Developer'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 Foreman, 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 Developer'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 Contractors and Subcontractors with whom the Developer 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 Developer'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 Developer 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 the Developer'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 Developer's obligations under these specifications are being carried out.
- N. Ensure that all facilities and the Developer's 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 supervisor's adherence to and performance under the Developer's EEO policies and affirmative action obligation.

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- viii. Contractors (including the Developer) are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (paragraphs vii.A through P). The efforts of a contractor association, joint contractor- union contractor-community, or other similar group of which the Developer is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs vii.A through P of these specifications provided that the Developer 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 Developer's minority and female workforce participation, makes a good faith effort to meet its individual goal and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Developer. The obligation to comply, however, is the Developer's and failure of such a group to fulfil an obligation shall not be a defense for the Developer's noncompliance.
- ix. A single goal for minorities and a separate single goal for women have been established. The Developer, 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 Developer may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Developer has achieved its goals for women generally, the Developer may be in violation of the Executive Order if a specific minority group of women is underutilized).
- x. The Developer shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.
- xi. The Developer shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
- xii. The Developer 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. If the Developer fails to carry out such sanctions and penalties it shall be in violation of these specifications and Executive Order 11246, as amended.
- xiii. The Developer, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph vii of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Developer 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.
- xiv. The Developer 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.

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- xv. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon 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).

C. SPECIFIC EQUAL EMPLOYMENT OPPORTUNITY RESPONSIBILITIES.

i. *General.*

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

B. The Developer will work with the Department and the Federal Government in carrying out equal employment opportunity obligations and in their review of his/her activities under the contract.

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

- ii. *Equal Employment Opportunity Policy.* The Developer will accept as its operating policy the following statement which is designed to further the provision of equal employment opportunity to all persons without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, or disability, and to promote the full realization of equal employment opportunity through a positive continuing program;

It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, 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.

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

iv. *Dissemination of Policy.*

A. All members of the Developer'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 Developer's equal employment opportunity policy and contractual

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responsibilities to provide equal employment opportunity in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum.

- B. 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 Developer's equal employment opportunity policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.
- C. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer or other knowledgeable company official, covering all major aspects of the Developer's equal employment opportunity obligations within thirty days following their reporting for duty with the Developer.
- D. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer or appropriate company official in the Developer's procedures for locating and hiring minority group employees.
 - 1. In order to make the Developer's equal employment opportunity policy known to all employees, prospective employees and potential sources of employees, i.e., schools, employment agencies, labor unions (where appropriate), college placement officers, etc., the Developer will take the following actions:
 - a. Notices and posters setting forth the Developer's equal employment opportunity policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - b. The Developer's equal employment opportunity policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

v. *Recruitment.*

- A. When advertising for employees, the Developer will include in all advertisements for employees the notation; "An Equal Opportunity Employer." All such advertisements will be published in newspapers or other publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- B. The Developer will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants, including, but not limited to, State employment agencies, schools, colleges and minority group organizations. To meet this requirement, The Developer will, through his EEO Officer, identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to The Developer for employment consideration.

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

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- C. The Developer will encourage his present employees to refer minority group applicants for employment by posting appropriate notices or bulletins in areas accessible to all such employees. In addition, information and procedures with regard to referring minority group applicants will be discussed with employees.
- vi. *Personnel Actions.* Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability. The following procedures shall be followed:
- A. The Developer 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 Developer will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- C. The Developer will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Developer 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 Developer will promptly investigate all complaints of alleged discrimination made to the Developer in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Developer will inform every complainant of all of his avenues of appeal.
- vii. *Training and Promotion.*
- A. The Developer will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- B. Consistent with the Developer's work force requirements and as permissible under Federal and State regulations, the Developer shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
- C. The Developer will advise employees and applicants for employment of available training programs and entrance requirements for each.
- D. The Developer will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
- viii. *Unions.* If the Developer relies in whole or in part upon unions as a source of employees, the Developer will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women with the unions, and to effect referrals by such unions of minority and female employees. Actions by the Developer either directly or through a contractor's association acting as agent will include the procedures set forth below:
- A. The Developer will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority

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- group employees and women so that they may qualify for higher paying employment.
- B. The Developer will use best efforts to incorporate an equal employment opportunity clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, or disability.
 - C. The Developer 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 Developer, the Developer shall so certify to the State highway department and shall set forth what efforts have been made to obtain such information.
 - D. In the event the union is unable to provide the Developer with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Developer will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The U.S. Department of Labor has held that it shall be no excuse that the union with which the Developer has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Developer from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such the Developer shall immediately notify the State highway agency.
- ix. *Subcontracting.*
- A. The Developer will use his best efforts to solicit bids from and to utilize minority group Subcontractors or Subcontractors with meaningful minority group and female representation among their employees. The Developer shall obtain lists of minority-owned construction firms from State highway agency personnel.
 - B. The Developer will use his best efforts to ensure Subcontractor compliance with their equal employment opportunity obligations.
- x. *Records and Reports.*
- A. The Developer will keep such records as are necessary to determine compliance with the Developer's equal employment opportunity obligations. The records kept by the Developer will be designed to indicate:
 - 1. The number of minority and nonminority group members and women employed in each work classification on the project.
 - 2. The Progress and efforts being made in cooperation with unions to increase employment opportunities for minorities and women (applicable only to contractors who rely in whole or in part on unions as a source of their work force).
 - 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees, and
 - 4. The progress and efforts being made in securing the services of minority group Subcontractors or Subcontractors with meaningful minority and female representation among their employees.
 - B. All such records must be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for

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inspection by authorized representatives of the State highway agency and the Federal Highway Administration.

The Developer will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form PR 1391.

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Appendix G

USDOT Order No. 1050.2A “USDOT Standard Title VI/Non-Discrimination Assurances”

Part I – All Contracts

During the performance of this Agreement, the Developer, for itself, its assignees, and successors in interest agrees as follows:

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

Part II – Clauses for Transfer of Real Property Acquired or Improved under the Activity, Facility, or Program

The Developer for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that, in the event facilities are constructed, maintained, or otherwise operated on the property subject to the Project License for a purpose for which a US DOT activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the licensee will maintain and operate such facilities and services in compliance with all requirements imposed by Non-

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discrimination Law such that no person on the grounds of race, color, or national origin will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

Part III – Clauses for Construction/Use/Access to Real Property Acquired under the Activity, Facility or Program

The licensee for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) the licensee will use the premises in compliance with all other requirements imposed by or pursuant to Non-discrimination Law.

Parts IV – Non-Discrimination Authorities

Without prejudice to the generality of any other nondiscrimination provisions in this Agreement, during the performance of this Agreement, the Developer, for itself, its assignees, and successors in interest agrees to comply with the following Non-discrimination Law (as any such Law is amended from time to time):

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);

Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;

The Age Discrimination Act of 1975, (42 U.S.C. § 6101 et seq.), as amended, (prohibits discrimination on the basis of age);

Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

Titles II and III of the Americans with Disabilities Act, (42 U.S.C. §§ 12131-12189), (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities), as implemented by US DOT regulations at 49 C.F.R. parts 37 and 38;

The Federal Aviation Administration’s Non-discrimination statute, (49 U.S.C. § 47123), (prohibits discrimination on the basis of race, color, national origin, and sex);

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

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Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 et seq.), (prohibits discrimination because of sex in education programs or activities).

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**Appendix H
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

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.

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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

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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.

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- 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.

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- 8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.
- 9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, 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.

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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.
- b. 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.
 - (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

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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 1.b., 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

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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.

- (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 Website 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:

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- 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.a.(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.
- b. 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

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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.

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- 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

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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

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- (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).

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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.

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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.

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- 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.

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.

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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.

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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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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.