SECURITY PAVING COMPANY, INC.

Subcontract Agreement

Prime Contractor	**Subcontractor**	**Owner**
SECURITY PAVING COMPANY, INC. 3075 Townsgate Road, Suite 200 Westlake Village, CA 91361 Phone: (818) 362-9200 Fax: (818) 362-9300		

Contract Number:
Subcontract Number:
Subcontract Date:

This Subcontract Agreement is made and entered into this ____ day of_____, 202_ by and between Security Paving Company, Inc. (the "Contractor") and NAME OF SUBCONTRACTOR (the "Subcontractor")

RECITALS

Security Paving Company, Inc. entered into a prime contract with OWNER/AGENCY (the "Owner") on DATE, to perform the following construction work on Contract No. ###: for PROJECT DESCRIPTION (the "Project").

The Prime Contract, including the Prime Contract's plans, drawings, and specifications and all other documents incorporated into the Prime Contract, whether by reference or other means, and any amendments thereto (collectively, "Prime Contract"), together with this Subcontract Agreement, including all appendices, exhibits and other documents incorporated into in this Agreement and/or its Exhibits, either by reference or other means, and any amendments thereto (collectively, the "Agreement") are hereinafter referred to the as the "Contract Documents." Subcontractor and his subcontractors will be and are bound by any and all of said Contract Documents insofar as they relate in any part or in any way, directly or indirectly to the work covered by this Agreement.

AGREEMENT

SECTION 1 – ENTIRE CONTRACT

Subcontractor certifies that he is fully familiar with all conditions and obligations of the Contract Documents, the job site, and the conditions under which work is to be performed, has considered the scheduling requirements of Owner and Contractor and the availability and cost of labor, materials, tools and equipment, and enters into this Agreement based upon his own investigation of all such matters, and that he is in no way relying upon the opinions or representations of Contractor. The Contract Documents are incorporated in this Agreement by reference. Subcontractor is bound to in the same manner and to the same extent as Contractor is bound to Owner under the Contract Documents with respect to the work provided for in this Agreement, and where in the Contract Documents reference is made to Prime Contractor or Contractor and the provision pertains to Subcontractor's trade, craft or type of work, then such provision shall be interpreted to apply to Subcontractor instead of Contractor.

The Work, as defined in Section 2, below, represents a portion of the work to be performed by Contractor pursuant to the Prime Contract. Those provisions of the Prime Contract applicable to the Work and general obligations applicable to subcontractors are hereby expressly incorporated herein by reference so that they shall flow down to Subcontractor. Subcontractor assumes and shall comply with all obligations of the Contract applicable to the Work. To the extent Owner enforces any set off, penalty, liquidated damages, or other remedy against Contractor that arises out of Subcontract Work or any errors, acts, or omissions of Subcontractor under this Subcontract, Contractor shall be entitled to enforce such remedy against Subcontractor.

If there is a conflict between the terms of the Prime Contract and the terms of this Subcontract, Subcontractor shall be deemed to have agreed to perform the most stringent or highest quality method of performing the Subcontract Work, and to provide the greater quantity and highest quality of materials required.

This Agreement, including any attachments, exhibits, and addendums hereto, represents the entire agreement between Contractor and Subcontractor relating to the Project, supersedes all other prior or contemporaneous oral or written understandings and agreements of the parties relating to the Project, and is expressly limited to the terms, conditions, and covenants stated or incorporated by reference herein. Any additional or different terms stated, offered, or proposed by Subcontractor (whether in a quote, proposal, or otherwise) are objected to and are hereby rejected. Any modification of this Agreement will be effective only if it is in a writing signed by authorized management level representatives of each party.

SECTION 2 – SCOPE OF WORK AND CONTRACT PRICE

Under the general direction of the Contractor, Subcontractor agrees to furnish all labor, services, materials, installation, cartage, hoisting, supplies, insurance, equipment, scaffolding, tools, utilities, storage and other facilities of every kind and description required for the prompt and efficient completion of the following items of work, in strict accordance with this Agreement and the Contract Documents (hereafter the “Work”), including all work necessary, incidental or reasonably inferred thereto:

Bid Item No.	Description	Unit Price	Unit Meas.	Contract Quantity	Contract Amount
	TOTAL:				

Contractor agrees to pay Subcontractor for the strict performance of the Work, the sum(s) stated above, hereafter the "Subcontract Price", subject to final determination of quantities where unit prices apply and to additions and deductions for changes in the Work as provided herein. Payments shall be in accordance with the schedule set forth in Section 3. If payment for any of the Work is based on a unit price, Subcontractor agrees to be bound by Owner's measurement of the quantity of work. If Owner does not measure the work, Subcontractor agrees to be bound by Contractor's measurement. The above prices include all applicable sales, use, franchise, excise and other taxes which may now or hereafter be levied.

SECTION 3 - PAYMENT SCHEDULE

In consideration of the faithful performance by Subcontractor of all the terms, conditions and requirements of this Agreement, Contractor agrees to pay Subcontractor in monthly payments for labor and materials which have been placed in position and for which payment has been made by Owner to Contractor, less any retention percentages withheld by Owner pursuant to the Prime Contract. Subcontractor agrees to submit its application for progress payments on approved Exhibit "C" forms as attached, or the applications will not be processed for payment. Retention shall be retained by Contractor until he receives final payment from Owner, but not less than thirty-five days after the entire work required by the prime contract has been fully completed in conformity with the Contract Documents and has been delivered and accepted by Owner, architect, and Contractor. Subject to the provisions of the next sentence, the retained percentage shall be paid to Subcontractor promptly after Contractor receives his final payment from Owner.

Subcontractor agrees to timely submit and furnish California statutory conditional and unconditional waiver and release forms, payroll affidavits, certified payroll, receipts, vouchers, releases of claims for labor, material and subcontractors performing work or furnishing materials under this Agreement (collectively, "Compliance Documentation"), all in form satisfactory to Contractor and required by the Owner. It is agreed that no payment hereunder shall be made, except at Contractor's option, unless and until any or all Compliance Documentation has been received by Contractor. Any payment made without Compliance Documentation shall not be construed as a waiver of right to require such Compliance Documentation prior to further payments. Any payment made prior to completion and acceptance of the work, as referred to above, shall not be construed as evidence of acceptance of any part of Subcontractor's work.

SECTION 4 - GENERAL SUBCONTRACT TERMS AND CONDITIONS

The General Subcontract Terms and Conditions, attached as Exhibit A, are an integral part of this Agreement.

SECTION 5 – EXHIBITS AND ADDITIONAL PROVISIONS

EXHIBIT A – General Subcontract Terms and Conditions
EXHIBIT B – Scope of Work and Exclusions
EXHIBIT C – Progress Payment Requirements and Billing Form
EXHIBIT D – Insurance Requirements
EXHIBIT E – If Required, Contract Provisions for Federal-Aid Construction Contracts
EXHIBIT F – Certified Payroll Requirements
EXHIBIT G – California Statutory Conditional and Unconditional Waiver Forms

All Certificates of Insurance Must Be Received in Our Office Prior to Your Start of Work on this Project. Subcontractor is Responsible for Any Business License(s) for this Project.

SECTION 6 – ADDITIONAL DOCUMENTS

An original and one duplicate copy of the following documents must be submitted to Contractor's office listed above prior to commencement of work on this project:

1. Your Illness, Injury Prevention Program must be submitted before any work is performed on the project
2. "Notice of Materials to be Used" must be completed and your MSDS sheet(s) if applicable.
3. Equipment list with identification numbers.
4. Contact names and numbers of key personnel including, but not limited to, EEO officer, administrative personnel, supervisory personnel and foremen on this project**.**

PLEASE REFER TO OUR **JOB # XXX** ON ALL CORRESPONDENCE AND BILLINGS.

SECTION 7 – CONTRACTOR'S LICENSE

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is: Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

IN WITNESS WHEREOF: The parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assign
ees on the day and year first above written.

SUBCONTRACTOR	**CONTRACTOR**
SUBCONTRACTOR	SECURITY PAVING COMPANY, INC.
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

☐ Corporation ☐ Partnership ☐ Proprietorship

Contractor's State License No.: _____ Contractor's State License No.: 116307 A C12

LIC EXPIRATION DATE: _____

FED TAX I.D. No.: _____ FED TAX I.D. No.: 95-1615343

EXHIBIT A - GENERAL SUBCONTRACT TERMS AND CONDITIONS

A. INSURANCE

(a) As set forth in Exhibit D, Subcontractor shall at all times, and at Subcontractor's own expense, provide and maintain for all operations hereunder, Workers' Compensation Insurance covering all of its employees, Public Liability and Property Damage insurance and Automotive Public Liability and Property Damage Insurance, including liability coverage for:

(i) all operations,
(ii) subcontract work,
(iii) contractual obligations,
(iv) product or completed operations,
(v) all owned vehicles,
(vi) non-owned vehicles, in forms, amounts and underwritten by insurance companies satisfactory to Contractor and as required by the Prime Contract.

(b) Before Subcontractor performs any work at, or prepares or delivers materials to, the site of construction, Subcontractor shall furnish certificates of insurance evidencing the foregoing insurance coverage and such certificates shall provide that the insurance is in force and will not be cancelled without Thirty days' written notice to Contractor. Subcontractor shall maintain all of the foregoing insurance coverage in force until the work under this Agreement is fully completed. The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of Contractor by Subcontractor under Paragraph B of the Agreement.

(c) If Subcontractor fails to procure or maintain the insurance required herein, Contractor shall have the right, but not the duty, to procure such required insurance in the name and for the account of Subcontractor, which Subcontractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith, or at Contractor's option, Contractor may offset the cost incurred by Contractor against amounts otherwise payable to Subcontractor hereunder. Subcontractor further agrees that in the event of such failure to procure and maintain such insurance, Subcontractor shall be liable for all amounts which would have been payable pursuant to the insurance required by this Agreement.

B. GENERAL INDEMNITY

(a) All work covered by this Agreement done at the site of construction or in preparing or delivering materials or equipment, or any or all of them, to the site shall be at the risk of Subcontractor exclusively. Subcontractor shall, to the fullest extent permitted by law and with respect to all work which is covered by or incidental to this subcontract, indemnify, defend, and hold harmless Contractor, (including its officers, directors, agents, employees and affiliated and related corporate entities), Contractor's surety, and Owner, as well as each and every party and/or person which Contractor is contractually or legally required to defend and/or indemnify (collectively, "Indemnified Parties"), from and against any claims, costs, demands, losses, expenses, liabilities, damages, judgments, actions, suits, fines, penalties, attorneys' or other fees (collectively, "Claims") arising from or relating to the injury or death of any person (including employees of Subcontractor or its sub-subcontractors) or damage or destruction to any property, but only to the extent arising out of or relating to any actual or alleged act or omission of Subcontractor, its sub-subcontractors, suppliers, or their officers, agents, employees, or anyone for whom Subcontractor may be legally or contractually responsible (collectively, "Indemnitor Parties").

(b) Subcontractor shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Indemnified Parties from any Claims arising from or relating to any of the following: (a) Subcontractor's actual or alleged failure to pay for all materials, supplies, work, and labor furnished or performed under this Subcontract, including taxes; (b) Subcontractor's actual or alleged failure to comply with this Subcontract or Subcontractor's acts or omissions whether or not negligent; (c) Subcontractors actual or alleged failure to comply with any applicable Laws, including without limitation, any OSHA or comparable state or local statutes on this Project or any other Subcontractor project; or (d) Subcontractor's actual or alleged infringement or violation of any patent or patent right arising from or in connection with this Subcontract.

(c) Subcontractor's obligation to indemnify, defend, and hold harmless Indemnified Parties from any Claims under this Paragraph B shall apply regardless of the concurrent fault of Indemnitor Parties and regardless of the actual or alleged acts, omissions, or negligence of the Indemnified Parties; provided, however, Subcontractor's obligations hereunder shall not apply to the extent the Claims are caused by the sole negligence or willful misconduct of an Indemnified Party.

(d) Subcontractor's obligation to indemnify, defend, and hold harmless Indemnified Parties under this Paragraph B shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefits acts, or by the insurance coverage required to be provided by Subcontractor under this Subcontract. The indemnification obligations in this Subcontract shall survive the expiration or earlier termination of the Subcontract.

(e) To the fullest extent permitted by law, if Contractor's indemnity obligations to Owner are broader in any respect than the provisions of this Subcontract, Subcontractor agrees to afford Owner and Contractor any such broader relief to the extent arising out of, relating to, or connected with the Subcontract Work.

(f) Subcontractor's indemnity obligations shall include the duty to reimburse all reasonable attorney's fees and expenses incurred by Indemnified Parties for legal action to enforce Subcontractor's defense and indemnity obligations under this Subcontract.

C. BONDING OF SUBCONTRACTOR

(a) Concurrently with the execution of this Agreement, or at any time during its performance, Subcontractor shall, if required by Contractor, execute a Labor and Material Bond and Faithful Performance Bond, in an amount equal to 100% of the Contract Price in Section 2, above. Said bonds shall be executed by an AM Best and Company A- or better, Class VIII or better, or as otherwise acceptable to Contractor and in a form satisfactory to Contractor. Contractor shall pay the premium on said bonds unless otherwise provided herein or in the Contract Documents. Contractor has the right to reject any bond that is not for the requisite penal sum or with an acceptable surety company.

(b) If Subcontractor fails to provide required bonds within ten (10) calendar days after execution of this Subcontract or at any time during the performance of the Subcontract Work, Contractor may terminate this Subcontract for default pursuant to Paragraph M. Alternatively, Contractor may, in Contractor's sole discretion, demand further assurances to cover Contractor Insecurity, including collateral (including additional retainage amounts) letters of credit, parent guarantees, or similar forms of security or combination thereof.

D. TIME

(a) Time is of the essence in this Agreement. It shall be Subcontractor's obligation to conform to Contractor's progress schedule, subject to Contractor's modification, which is incorporated herein by this reference and made a part hereof. Subcontractor shall prepare and obtain approval as required by the Contract Documents for all shop drawings, details, samples, and do all other things necessary and incidental to the prosecution of his work in conformance with the said progress schedule. Subcontractor shall provide said shop drawings and other information described herein within the scheduled milestones and deadlines required by Contractor and so that Contractor has all time necessary to comply with the requirements of its schedule and the General Contract. Review and approval of these shop drawings by the Architect, Owner, governing agency or Contractor will not relieve Subcontractor of its obligation to perform the work in strict accordance with the General Contract's Plans and Specifications. Contractor reserves the right to reject any submittal in its sole judgment; and review and approval of Subcontractor's submittals by Contractor does not constitute Contractor's acceptance of the work identified therein.

(b) Subcontractor acknowledges that Contractor or Owner may require that certain portions of the Project be accessible and/or used concurrently by Subcontractor and others. Subcontractor must keep itself informed of the conditions of and relating to the Project to avoid any delay. Subcontractor shall cooperate with Contractor, Owner and other contractors and subcontractors employed on the Project; and shall not cause any hindrance or interruption of Contractor, Owner or other contractors and subcontractors. If Subcontractor delays any portion of the project, Contractor may direct Subcontractor to increase its workforce, the number of shifts, the days of work, and to institute overtime operations to maintain the Schedule or to regain any time lost. Subcontractor shall promptly follow Contractor's direction notwithstanding any dispute. Changes to Contractor's Schedule shall not excuse Subcontractor's performance for any period or entitle Subcontractor to damages from Contractor unless such changes or their cause permit Contractor to recover such damages on behalf of Subcontractor from Owner under the Prime Contract. Should Subcontractor fail to properly expedite its work, be entirely or partially responsible for Contractor or Owner taking over the work or a portion of the work or the assessment of damages as provided under the terms of the Prime Contract, Subcontractor hereby agrees to repay Contractor Subcontractor's proportionate share of any additional expense incurred by Contractor by such action.

(c) Subcontractor represents that it has inspected the Work Site and is familiar with local conditions under which the Work is to be performed, including potential congestion, restrictions upon transportation and staging or storage of material and equipment, parking, and movement of labor forces to and within the Work. Subcontractor's entitlement to additional time or compensation resulting from differing Work Site conditions is limited by Contractor's entitlement to an adjustment for such circumstances pursuant to the Prime Contract.

E. OWNER DELAYS - If Owner is responsible for any delay, disruption, suspension, stoppage, interference, compression, or acceleration that impacts Subcontractor's Work, Subcontractor will be entitled to additional time and compensation only if and to the extent that Owner grants Contractor additional time and compensation therefor and Contractor recovers compensation for such damages from Owner on account of such impacts to Subcontractor's Work.

F. OTHER DELAYS - Except as otherwise prohibited by law, Subcontractor shall have no claim against Contractor for damages associated with any delay, disruption, suspension, stoppage, interference, compression, or acceleration of Work, including losses of labor and equipment productivity associated therewith (collectively, "Delay Damages") for any reason, and all such claims shall be fully compensated by the granting of a time extension. Where Delay Damages are mandated by law, Subcontractor may get Delay Damages for delays to the extent caused by Contractor only for delays which are not concurrent with any (i) delays for which Subcontractor is not entitled to compensation pursuant to the Prime Contract or (ii) delays which were caused by or are the responsibility of Subcontractor, in whole or part. Furthermore, such Delay Damages shall include only: (a) increased wages attributable to work being performed by trades in a higher wage period; (b) increased field office expenses due to extended schedule for the Work; (c) increased materials cost attributable to purchase materials in a higher price period; (d) increased cost to store materials, to the extent that the Subcontractor can demonstrate that such storage is specific to this Project; (e) increased cost of insurance and bonding due to extended schedule for the Work; (f) with respect to rented equipment during the extended schedule period, the lesser of the actual rental cost or the reasonable rental value for idled equipment on the site; and (g) with respect to Subcontractor-owned heavy construction equipment idled during the extended schedule period, the lesser of a reasonable rental cost or the cost of transportation to remove and return the equipment to the jobsite. Contractor will only pay Delay Damages as set forth above for amounts which are actually, reasonably, and necessarily incurred and verifiable by appropriate documentation and which Subcontractor could not have reasonably avoided. No allowance or extension shall be made unless a claim therefore is presented in writing to the Contractor within 48 hours of the commencement of such delay, and under no circumstances shall the time of completion be extended to a date which will prevent Contractor from completing the entire project within the time that Owner allows Contractor for such completion.

G. SUBCONTRACTOR DELAYS - Should Subcontractor default in the proper performance of his work, thereby causing delay to the Prime Contract work, he shall be liable for any and all loss and damages, including liquidated damages sustained by Contractor as a result thereof. Subcontractor shall not be liable under this paragraph if such default be caused by strikes, lockouts, acts of God or other reasons beyond the control of Subcontractor, concerning which, however, notice of occurrence of same shall be given in writing immediately by Subcontractor to Contractor.

H. CHANGES IN THE WORK

(a) Subcontractor hereby agrees to make any and all changes, furnish the materials and perform the work that Contractor may require (collectively, "Change Order Work"), without nullifying this Agreement, at a reasonable addition to, or reduction from, the Contract Price stated herein, and pro rata to the same, regardless of whether the parties agree upon the change to the Price or Schedule. If the parties fail to reach an agreement, Contractor may direct the Change Order Work to be performed on a time and material basis. Subcontractor shall adhere strictly to the plans and specifications unless a change there from is authorized in writing. Under no conditions shall Subcontractor make any changes, either as additions or deductions, without the written order of the Contractor and Contractor shall not pay any extra charges made by the Subcontractor that have not been agreed upon in writing by Contractor and, in no event, shall Contractor make payment for any such extra charges unless and until the Contractor itself receives payment from Owner. Subcontractor shall submit immediately to the Contractor written copies of his firm's cost or credit proposal for changes in the Work. Disputed work shall be performed as ordered in writing by the Contractor and the proper cost or credit breakdowns therefore shall be submitted without delay by Subcontractor to Contractor.

(b) If the provisions of the Prime Contract require Contractor to file notices, claims or other documents with Owner within a specified time period in order to receive time extensions or compensation for extra or changed work, Subcontractor shall supply these to Contractor to allow Contractor to timely review and file them. Subcontractor shall not be entitled to recover damages from Contractor as a result of any act, omission or event without proof that it gave Contractor immediate written notice that it was being or would be damaged by such act, omission or event, but in no event later than 10 days after the first occurrence of the act, omission or event, or at such shorter time as may be required by the General Contract Documents. Subcontractor's failure to provide this notice shall be conclusive proof of Subcontractor's failure to mitigate damages and will be a complete defense to the recovery of any damages, including damages for delay, caused by such act, omission or event and shall apply whether the theory of recovery, is legal or equitable or for a tort, including fraud, breach of contract, promissory estoppel or quantum meruit.

(c)If the Subcontractor initiates a substitution, deviation or change in the Work which affects the scope of work or the expense of other trades, Subcontractor shall be liable for the expense thereof.

(d) No change, alteration or modification in or deviations from this Agreement or the plans or specifications, whether made in the manner herein provided or not shall release or exonerate in whole or in part any surety on any bond given in connection with this Agreement and neither Owner nor Contractor shall be under any obligation to notify the surety or sureties of any such change.

(e) A change order may arise from changes to the Work or schedule initiated by or the responsibility of Owner or from other reasons set forth in the Prime Contract ("Owner Change"). If Subcontractor requests additional time or money due to an Owner Change, Subcontractor must submit its request in accordance with the terms of the Contract Documents. The provisions of the Prime Contract with respect to schedule adjustment, pricing, mark-up, overhead, approval, and performance of an Owner Change shall apply to this Agreement and are fully binding upon Subcontractor. Contractor is liable to Subcontractor for an Owner Change only to the extent that Owner is liable to Contractor for Subcontractor's Change Order Work. Owner's decision regarding compensation and time resulting from an Owner Change is binding upon Subcontractor.

I. LIENS

(a) Subcontractor shall at all times indemnify and save Contractor and Owner harmless against all liability for claims and liens, or any other type of encumbrance filed against Subcontractor in relation to the work or materials used or furnished in relation to the work covered by this Agreement (collectively, "Lien"), including any costs and expenses for attorneys' fees and all incidental or consequential damages resulting to Contractor or Owner from such claims or liens. Further, in case suit on such claims is brought, Subcontractor shall defend said suit at his own cost and expense and will pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit. Contractor shall have the right to retain out of any payment due or which may become due to Subcontractor an amount sufficient to indemnify Contractor against any loss, cost, or expense arising from any such Lien, including attorney's fees. Subcontractor agrees within seven (7) days of receipt of notice of the Lien or within the deadline required by the Prime Contract, whichever is shorter, to cause the Lien to be discharged by payment, bonding, or otherwise, and in the event Subcontractor shall fail so to do, Contractor is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with reasonable attorney's fees, shall be immediately due and payable to Contractor by Subcontractor. Subcontractor may litigate any such lien or suit provided he causes the effect thereof to be removed, promptly in advance, from the premises, and shall further do such things as may be necessary to cause Owner not to withhold any monies due to Contractor from Owner by reason of such liens or suits. The rights contained in this section are absolute and not dependent upon the ultimate validity of such Lien. Any amounts retained by Contractor pursuant to this section will be interest free and will not be released until the invalidity of any such Lien has been conclusively determined by a tribunal of competent jurisdiction, or has been properly paid and satisfied, and documents evidencing such disposition have been presented to Contractor.

(b) It is understood and agreed that the full and faithful performance of the Agreement on the part of Subcontractor (including the payment of any obligations due from Subcontractor to Contractor and any amounts due to labor or material men furnishing labor or material for said work) is a condition precedent to Subcontractor's right to receive payment for the work performed and any monies paid by Contractor to Subcontractor under the terms of this Agreement shall be impressed with a trust in favor of labor and material men furnishing labor and material to Subcontractor on the Work herein subcontracted, as well as in favor of any taxes, insurance premiums, or governmental fees owed in connection with the work. Subcontractor will apply the payments received from Contractor for these purposes before using any part thereof for any other purpose. Subcontractor shall, as often as requested by Contractor, furnish an Affidavit showing the names and addresses of all persons who have furnished labor, equipment, services or materials in connection with the work, as well as the amount due, or to become due to each such person, and the amounts paid to each such person by Subcontractor.

(c) Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's material suppliers, subcontractors and any person or firm who has or asserts a right of action against Contractor or its surety.

J. RECOURSE BY CONTRACTOR - In the event that Subcontractor at any time refuses or neglects to supply a sufficient number of properly skilled workman or a sufficient quantity of materials of proper quality, or be adjudicated a bankrupt, or files an arrangement proceeding or commits any act of insolvency, or makes an assignment for benefit of creditors without Contractor's consent, or fails to make prompt payment to his material men and laborers, or fails in any respect to properly and diligently prosecute the Work covered by this Agreement, or becomes delinquent with respect to contributions or payment required to be made to any Health and Welfare, Pension, Vacation, Apprenticeship or other employee benefit program or trust, or fails to fulfill any of the provisions of Paragraph Q of these General Subcontract Provisions by him to be performed, or otherwise fails to perform fully any and all of the agreements herein contained, Contractor may, at his option (1) after giving forty eight (48) hours written notice to Subcontractor, provide any such labor and materials as may be necessary and deduct the cost thereof from any money then due or thereafter to become due to the Subcontractor, under this Agreement, or (2) terminate Subcontractor's right to proceed with the Work and in that event, Contractor shall have the right to enter upon the premises of the project and take possession, for the purpose of completing the Work included under this Agreement, of all materials, tools, and appliances of Subcontractor, and may employ any other person or persons to finish the Work and provide the materials therefore. In case of such termination of Subcontractor's right to proceed with the

Work, said Subcontractor shall not be entitled to receive any further payment under this Agreement until the work undertaken by Contractor in his Prime Contract is completely finished. At that time, if the unpaid balance of the amount to be paid under this Agreement exceeds the expenses incurred by Contractor in finishing Subcontractor's Work, such excess shall be paid by Contractor to Subcontractor; but, if such expense shall exceed such unpaid balance, then Subcontractor shall promptly pay to Contractor the amount by which such expense exceeds such unpaid balance. The expense referred to in the last sentence shall include expenses incurred by Contractor for furnishing materials, for finishing the Work, for attorneys' fees, and any damages sustained, by reason of Subcontractor's default, plus a markup of 15% General Overhead and 10% Profit on any and all of such expenses, and Contractor shall have a lien upon all materials, tools and appliances taken possession of, as aforesaid, to secure the payment thereof. The notice referred to in this paragraph will be sufficient and complete when mailed to Subcontractor at his address shown in this Agreement.

K. WITHHOLD AND OFFSET – Contractor may withhold or offset, or on account of subsequently discovered evidence, nullify the whole or a part of any payment under Section 3, above, to such extent as may be necessary to protect Contractor from loss, including costs and attorney's fees, on account of (1) defective work not remedied, (2) claims filed or reasonable evidence indicating probable filing of claim; (3) failure of Subcontractor to make payments properly to his subcontractors or for material, labor, or for fringe benefits; (4) a reasonable doubt that this Agreement can be completed for the balance then unpaid; (5) damage to another subcontractor, (6) failure to achieve sufficient progress with the subcontract Work to meet the schedule for such Work, or timely completion of the Project; (7) any failure by Subcontractor to fully comply with all applicable safety rules, regulations and policies relating to the Project, or (8) sums owed or claimed by Contractor to be owed Contractor (or an affiliate) by Subcontractor (or an affiliate) under or by virtue of this Subcontract or any other Subcontract by and between Contractor (or an affiliate) and Subcontractor (or an affiliate). When the above grounds are removed, such amounts as are then due and owing shall be paid or credited to Subcontractor.

L. OWNER-RELATED CLAIMS - All claims of Subcontractor arising out of acts or omissions of Owner shall be presented to Owner by Contractor on behalf of Subcontractor and finally resolved through the claims procedure, (arbitration, litigation or otherwise) applicable between Contractor and Owner. For purposes of applying the preceding sentence, Contractor shall decide whether Subcontractor's claims arise out of the acts or omissions of Owner. In addition to the notice requirements of this Agreement, if the provisions of the Prime Contract require Contractor to file within specified time periods, notices, claims or other documents with Owner in order to receive compensation for claims, Subcontractor shall supply these to the Contractor so as to allow Contractor to timely file them with Owner. Subcontractor shall pay all costs and expenses, including attorneys' fees, related to the presentation and prosecution of such claims. In the pursuit of such a claim, Contractor shall provide reasonable cooperation, shall be reimbursed for its costs in connection therewith (including reasonable attorney fees), and shall be entitled to the appropriate contractor mark-up out of any claim recovery. Subcontractor's sole remedy shall be to receive the amount received by Contractor from Owner with respect to such claims. If any such payment from Owner fails to designate specifically the extent to which Subcontractor delay or other damages are represented in the payment, then Contractor, in its sole discretion, shall make that determination and Subcontractor agrees to be finally bound thereby. If certification of claims is required, Subcontractor covenants and agrees to furnish Contractor with a certification of any claim in a form satisfactory to Contractor. Subcontractor agrees to protect, defend, (if requested), indemnify and hold Contractor harmless from any losses, claims, damages or expenses (including attorney's fees and related costs at all levels of proceedings) Contractor may suffer or incur, including those incurred as a result of Subcontractor's inability to support any part of its claim and/or a determination that such failure is attributable to misrepresentation of fact or fraud on the part of Subcontractor. All other claims and disputes between the parties shall be decided by arbitration as set forth in Section M, below. Subcontractor shall not be entitled to recover damages from Contractor as a result of any act, omission or event without proof that it gave Contractor immediate written notice that it was being or would be damaged by such act, omission or event, but in no event later than 3 days after the first occurrence of the act, omission or event, or at such shorter time as may be required by the Contract Documents. Subcontractor's failure to provide this notice shall be conclusive proof of Subcontractor's failure to mitigate damages and will be a complete defense to the recovery of any damages, including damages for delay, caused by such act, omission or event and shall apply whether the theory of recovery, is legal or equitable or for a tort, including fraud, breach of contract, promissory estoppel or quantum meruit.

M. RESOLUTION OF OTHER CLAIMS; ARBITRATION

(a) Within 30 days after a party sends notice to the other party of any dispute other than an Owner-Related Claim ("Dispute"), each party shall designate a senior representative to engage in direct negotiation to resolve the Dispute. The senior representatives will meet in person, or if both parties agree, via telephone, within 30 days of being so designated and will make a good faith attempt to resolve the Dispute. If the representatives cannot negotiate a resolution to the dispute, the

parties may submit the dispute for mediation administered by the American Arbitration Association under its Construction Industry Mediation Procedures. Each party shall pay an equal share of the cost of the mediator and any AAA fees. Mediation shall be a condition precedent for Subcontractor to file an arbitration proceeding, as set forth below.

(b) Any dispute between Contractor and Subcontractor not resolved by mediation shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitration shall be in Ventura County, California. The foregoing agreement to arbitrate shall be specifically enforceable in any court of competent jurisdiction. Upon its request, Contractor shall be entitled to consolidation or joinder of any arbitration involving Subcontractor with related arbitrations involving other parties. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction. If Contractor notifies Subcontractor that Contractor contends any arbitration brought under this Section M.(b) involves a controversy within the scope of Sections M.(c) and Section M.(d), the dispute process shall be stayed until the procedures under Section M.(c) and M.(d) are completed. Subcontractor hereby consents to jurisdiction and venue in Ventura County, California.

(c) In the event that the Contractor and Owner or others arbitrate matters relating to this Agreement, the Subcontractor shall be required, at the request of the Contractor, to prepare and present the Contractor's case, at Subcontractor's expense, to the extent the proceedings relate to this Agreement.

(d) Should the Contractor enter into arbitration with the Owner or others with regard to issues relating to this Agreement, the Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor.

(e) Subcontractor shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contractor and/or Owner, provided Subcontractor was provided with notice and an opportunity to participate in such proceeding.

N. TERMINATION FOR DEFAULT

(a) If Subcontractor materially breaches any term of this Agreement, Contractor may declare a default and/or terminate this Agreement or any part thereof for default. Contractor may also declare a default and/or terminate this Agreement for default, in whole or in part, if:

(i) The Work, or any part thereof, is not commenced or prosecuted by Subcontractor in accordance with Contractor's progress schedule and in sufficient time for Contractor to meet its schedule under the Prime Contract;

(ii) Subcontractor fails or refuses to comply with Contractor's written directions;

(iii) Subcontractor delays or interferes with the work of Contractor, including Contractor's other Subcontractors, under the Prime Contract;

(iv) Subcontractor fails to pay its subcontractors, laborers, materialmen, or others to whom it may be indebted when such debts become due;

(v) Subcontractor fails to comply with the requirements of any federal, state, or local law, regulations, or other legal requirement, including the requirement to provide certified copies of payroll;

(vi) Subcontractor fails to furnish adequate assurances, as determined in Contractor's discretion, of its ability to duly and timely complete the work; or

(vii) Any petition for Subcontractor's bankruptcy, or any other insolvency proceedings, is filed or commenced by or against Subcontractor; a receiver is appointed for Subcontractor; or Subcontractor makes an assignment for the benefit of its creditors.

(b) Contractor will provide written notice of any default to Subcontractor. If Subcontractor does not cure the default within three business days after receipt of notice of default, Contractor may declare a default and/or terminate this Agreement for default, in whole or part. Contractor's failure to provide notice of a default by a certain deadline shall not waive its right to do so thereafter during any time such default continues to exist and shall not relieve Subcontractor of any of its obligations under this Agreement.

(c) Upon a Subcontractor termination for default, Contractor may take over and complete any Work not completed by Subcontractor before the termination under this section ("Defaulted Work") or, at its option, employ others to complete the Defaulted Work. Contractor, or anyone employed on Contractor's behalf to complete the Defaulted Work, may use any major equipment or materials provided by Subcontractor until all Defaulted Work has been completed. After the Defaulted Work has been completed, Subcontractor may remove such equipment or materials that remain, but neither Contractor nor any person employed on Contractor's behalf to complete the Defaulted Work is liable for ordinary wear and tear. Subcontractor shall reimburse Contractor for all costs to complete the Defaulted Work, including the following: (a) the

actual and necessary expense of completing the Defaulted Work (including all charges of any person employed to finish the Work); (b) reasonable attorneys' fees incurred by Contractor in exercising its rights under this section; (c) damages incurred by Contractor, Owner, or any other subcontractor or contractor working on the Project arising from Subcontractor's default; and (d) 10% of direct costs for overhead if Contractor completes the Work itself (items (a) through (d) hereinafter "Completion Costs").

(d) If this Agreement is terminated for default, Subcontractor is not entitled to any further payment until all Defaulted Work is completed and Contractor has received payment in full therefor from Owner. If such Completion Costs plus all previous payments made to Subcontractor exceeds the Subcontract Price, Subcontractor shall pay the difference to Contractor.

(e) If this Agreement is terminated for default, in whole or part, and it is determined that such termination was improper or wrongful, the termination shall then be deemed to be a termination for convenience, but no pre-judgment or other interest shall apply in respect of any payment due Subcontractor thereunder.

O. TERMINATION FOR CONVENIENCE - To the extent permitted by law and pursuant to the Prime Contract, Contractor shall have the right in its sole discretion to terminate, in whole or in part, this Agreement for its own or Owner's convenience for any reason and regardless of whether Subcontractor is in default. Contractor shall provide written notice of any termination for convenience to Subcontractor signed by an authorized representative of Contractor. Subcontractor must stop its Work immediately upon receipt of such notice. If this Agreement is terminated for Contractor's convenience, Contractor shall pay Subcontractor for that portion of the Work performed, plus any costs for labor, subcontractors, or materials, reasonably and necessarily incurred by Subcontractor to comply with such termination ("Subcontractor Termination Costs"), plus an amount equal to 5% of such Subcontractor Termination Costs for and in lieu of overhead and profit thereon. Contractor is not liable to Subcontractor for any other costs nor for prospective profits on Work not performed. If this Agreement is terminated for Owner's convenience pursuant to the Prime Contract, Subcontractor shall be entitled to payment in connection with such termination to the extent Owner pays Contractor in connection with same on behalf of Subcontractor.

P. SUBCONTRACTOR'S REPRESENTATIVE – Subcontractor shall keep a representative at the job site during all times when Subcontractor's Work is in progress, and such representative shall be authorized to represent Subcontractor as to all phases of the Work. Prior to commencement of the Work, Subcontractor shall notify Contractor of the name, work and cellular telephone number of Subcontractor's representative. In the event of any change of representative, Subcontractor shall notify Contractor who the new representative is to be prior to such change becoming effective.

Q. LABOR RELATIONS

(a) Employment of labor by Subcontractor shall be effected under conditions which are satisfactory to Contractor. Subcontractor acknowledges, that Contractor has entered into Master Labor Agreements covering work at his construction job sites with for the following labor unions: **5 BASIC TRADES (Laborers, Operators, Carpenters, Cement Masons, and Teamsters).** Subcontractor agrees to comply with all the terms and conditions of those Master Labor Agreements including trust fund payments into the respective trust funds set forth in the respective labor agreements, referred to above insofar as Subcontractor may lawfully do so, and in particular agrees to comply with the terms and provisions of said agreements setting forth the jurisdiction and the scope of work claimed by each of such crafts and the procedure contained therein for resolution of jurisdictional disputes. In the absence of any such procedure, or if such procedure fails to promptly resolve the jurisdictional dispute, Subcontractor agrees, at his own cost and expense, upon request of Contractor, to take any and all lawful steps to secure a binding and final determination of said jurisdictional dispute by the National Labor Relations Board.

(b) Should there be picketing on the Contractor's job site, and the Contractor establishes a reserved gate for the Subcontractor's purposes, it shall be the obligation of the Subcontractor to continue the proper performance of his Work without interruption or delay.

(c) Subcontractor further promises and agrees that he will bind and require all of his subcontractors and their subcontractors performing job site work of the type covered by any of the labor agreements specified above to agree to all of the foregoing promises and undertakings, to the same effect as herein provided with respect to him.

(d) Subcontractor will indemnify and hold harmless Contractor from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorney's fees and any other costs which may be incurred by the Contractor resulting from Subcontractor's failure to fulfill the covenant set forth in this paragraph.

R. LAYOUT RESPONSIBILITY - Contractor will provide Subcontractor with line and grade, which Subcontractor will use to layout its Work. Subcontractor shall lay out and install its work in such manner as not to delay or interfere with the Prime

Contract work performed by others. If Subcontractor fails to accurately lay out its Work, Subcontractor shall alter or repair its Work as necessitated by such failure, all at Subcontractor's expense. Subcontractor shall be strictly responsible for the accuracy of his Work and for any loss or damage to other contractors engaged in work on the site because of a failure of Subcontractor to set out or perform his Work correctly or to coordinate his Work with the work of others.

S. WORKMANSHIP - Every part of the work herein described shall be executed in strict accordance with the Contract Documents in the soundest, workmanlike, and substantial manner. All workmanship shall be of the best of its several kinds, and all materials used in the Work herein described shall be furnished in ample quantities to facilitate the proper and expeditious execution of the work, and shall be new and the best of their respective kinds, except such materials as may be expressly provided in the Contract Documents to be otherwise.

T. PROVISIONS FOR INSPECTION – Subcontractor shall at all times furnish to Contractor and its representatives, and the Owner as required by the Contract Documents, safe and ample facilities for inspecting materials at the site of construction, shops, factories or any place of business of Subcontractor and its subcontractors and material men where materials under this Agreement may be in course of preparation, process, manufacture or treatment. Subcontractor shall furnish to Contractor as often as required by Contractor, full reports of the progress of the Work at any place where materials under this Agreement may be during preparation or manufacture. Such reports shall show the progress of such preparation and manufacture in such details as may be required by Contractor, including, but not limited to, any plans, drawings or diagrams during preparation.

U. MATERIALS AND WORK FURNISHED BY OTHERS - In the event the scope of Work includes installation of materials or equipment furnished by others or work to be performed in areas to be constructed or prepared by others, it shall be the responsibility of Subcontractor to examine and accept, at the time of delivery or first access, the items or areas so provided and thereupon handle, store and install the items or so protect such areas with such skill and care as to insure satisfactory completion of the Work. Use of such items or commencement of Work by Subcontractor is such areas shall be deemed to constitute acceptance thereof by Subcontractor. Loss or damage due to acts of Subcontractor shall be charged to the account of Subcontractor and deducted from monies otherwise due under this Agreement.

V. PROTECTION OF WORK

(a) Until Subcontractor completes its work, Subcontractor will protect its Work from any damage and shall, at its own expense, fully safeguard and secure its work. Subcontractor shall promptly repair and correct any damage to its Work. If Subcontractor fails to repair or correct any damage, nonconformity, or defect to its Work within three calendar days of receipt of notice from Contractor, Contractor may make any repairs or corrections and deduct the reasonable cost thereof from any amounts due Subcontractor without limiting any other remedy or right Contractor may have. If Owner or Contractor elects to accept nonconforming work rather than requiring its removal or correction, the Subcontract Price shall be adjusted as necessary to equitably compensate Contractor for any charge by Owner arising out of Subcontractor's failure to strictly comply with the Contract Documents.

(b) Subcontractor shall be liable for any loss or damage to any work in place, to any of Contractor's SWPPP BMPs, or to any equipment and materials on the job site, caused by him or his agents, employees or guests.

W. USE OF CONTRACTOR'S EQUIPMENT - In the event Subcontractor shall use Contractor's equipment, materials, labor, supplies or facilities Subcontractor shall reimburse Contractor at a predetermined rate, unless otherwise stated herein. Further, Subcontractor assumes all responsibility for, and shall hold Contractor harmless from any claims, actions, demands, damages, liabilities, or expenses, including attorneys' fees, resulting from the use of such equipment, materials, labor, supplies, or facilities by Subcontractor or his agents, employees, or permittee. If Contractor's employees are used by Subcontractor, Subcontractor shall have full responsibility for all acts or omissions of Contractor's employees with regard to such operation Subcontractor accepts any and all of Contractor's equipment, materials, labor, supplies, or facilities as furnished.

X. CLEAN-UP - At all times during construction, Subcontractor shall perform his Work so as to maintain the site in a clean, safe and orderly condition. Upon completion of the Work under this Agreement, Subcontractor shall remove from the site all temporary structures, debris and waste incident to his operation and clean all surfaces, fixtures, equipment, etc. relative to the performance of this Agreement. Contractor may order Subcontractor to clean up his areas at any time Contractor deems such action necessary. If Subcontractor fails to perform a clean-up function within two days after notification from Contractor to do so, Contractor may proceed with that function as he judges necessary and in the manner he may deem expedient, and the cost thereof shall be charged to Subcontractor and deducted from monies due under this Agreement. In the event Contractor is unable to determine which Subcontractor is responsible for the clean-up of any debris, etc.

Contractor may, at its sole discretion, apportion the cost of such clean-up in such manner as he may determine to be equitable.

Y. GUARANTEE – Subcontractor guarantees all materials and workmanship and agrees to replace at his sole cost and expense, and to the satisfaction of Contractor, any and all materials adjudged defective or improperly installed as well as guarantee the Owner and Contractor against liability, loss or damage arising from said installation during a period of one year from completion and acceptance of the work covered by the Prime Contract. If, however, the period of guarantee is stipulated in excess of one year by the Contract Documents, Subcontractor shall be bound during the longer period stipulated.

Z. ASSIGNMENT OF CONTRACT – Subcontractor shall not, without written consent of Contractor, assign, transfer, nor sublet any portion or part of the work required by this Agreement nor assign any payments hereunder to others. Contractor may assign or transfer the whole or part of this Agreement, and his rights hereunder, to any corporation, individual, or partnership.

AA. INDEPENDENT CONTRACTOR - Subcontractor is an independent contractor and shall, at his sole cost and expense, and without increase in the Subcontract Price, comply with all laws, rules, ordinances, and regulations of all governing bodies having jurisdiction over the work obtain all necessary permits and licenses therefore, pay all manufacturers' taxes, sales taxes, use taxes, processing taxes, and all federal and state taxes, insurance and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remunerations paid to Subcontractor's employees, whether levied under existing or subsequently enacted laws, rules, or regulations Subcontractor, upon request, shall furnish evidence satisfactory to Contractor that any or all of the foregoing obligations have been fulfilled.

BB. EXCUSE - Any act or omission of Contractor which Subcontractor might claim as an excuse for his own failure to perform shall be deemed waived by Subcontractor unless he shall notify Contractor of his intention to assert such excuse within ten days after the occurrence of any such act or omission. Each party has had the opportunity to negotiate the terms of this Agreement and it shall be interpreted in accordance with its terms without favor to either party and without presumption favoring or disfavoring either party by virtue of authorship.

CC. ATTORNEY'S FEES - In the event either Contractor or Subcontractor institutes suit in court against the other party, or against the surety of such party, in connection with any dispute or matter arising under this Agreement, the party which prevails in that suit shall be entitled to recover from the other its attorney's fees in reasonable amount which shall be determined by the court and included in the judgment in said suit.

DD. SAFETY AND EQUAL EMPLOYMENT OPPORTUNITY VIOLATIONS - SUBCONTRACTOR'S INDEMNITY

(a) Subcontractor shall, at its expense, conform to the basic safety policy of the Contractor, and comply with all specific safety requirements promulgated by any governmental authority, including, without limitation, the requirements of the Occupational Safety Health Act of 1970, the Construction Safety Act of 1969, the California Labor Code, including Sections 6300 through 6604, and 7100 through 7332, inclusive, and all successors and amendments thereto, and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer said Acts.

(b) Subcontractor shall at his own expense, conform to the equal employment opportunity policies of the Contractor, and, in addition, shall comply with all equal employment opportunity requirements promulgated by any governmental authority, including, without limitation, the requirements of the Civil Rights Act of 1964, 42 United States Code, Section 1983, Executive Orders 11246, 11375 and 11478, the California Fair Employment Practices Act, the California Plan, any other applicable statute or ordinances, plans or programs, inclusive, and all successors and amendments thereto, and all plans, programs, standards and regulations which have been or shall be promulgated or approved by the parties or agencies which administer said Acts or Orders (hereinafter collectively referred to as EEO laws).

(c) Subcontractor shall have and exercise full responsibility for compliance here under by itself, its agents, employees, material men, and subcontractors with respect to its portion of the work on this Project, and shall directly receive, respond to, defend and be responsible for any citation, assessment, fine or penalty by reason of Subcontractor's failure or failure of Subcontractor's agents, employees, material men and subcontractors to so comply. Subcontractor shall indemnify and hold harmless Contractor from and against any liability, loss, damage, cost, claims, awards, judgments, fines, expenses, including litigation expenses, reasonable attorneys' fees, claims or liability for harm to persons or property, expenses, incurred pursuant to or attendant to any hearing or meeting and any other applicable cost which may be incurred by Contractor resulting from Subcontractor's failure to fulfill the covenants set forth in this paragraph.

(d) In the event Subcontractor fails to comply: (1) with any citation issued by the Secretary of Labor, any order issued by the Occupational Safety and Health Review Commission or any order issued by the Division of Industrial Safety of the State

of California or of any other body responsible for the administration and/or enforcement of any statute, regulation or ordinance relating to occupational health and safety within the period specified in any such citation or order, (2) with any of the aforementioned EEO laws, or any judgment, order or award issued by the Office of Federal Contract Compliance, United States Department of Labor, or any other federal, state or local agency or any court of law, or any other body responsible for the administration and/or enforcement of any EEO laws, within the period specified in any such laws judgment order or award. Contractor may, in his discretion, exercise the rights and remedies provided him under the terms of this Subcontractor, including but not limited to, the rights and remedies provided in Paragraph J, Recourse by Contractor.

EE. OTHER TERMS

(a) Inspection of Records. Contractor and Owner may audit all of Subcontractor's books, records, documents, schedules, bid estimates, and other data of Subcontractor relating to bidding, pricing or performance of this Agreement, any Change Order, or claim. This right is in addition to any other discovery or similar rights arising out of litigation and is subject to specific enforcement and injunctive relief. Contractor may exercise this right for the same period of time that Owner may do so under the Prime Contract, but in no event shall such period of time be less than six years after Owner's acceptance of the Project.

(b) Cumulative Rights and Remedies of Contractor. None of the rights and remedies granted to, conferred upon, or reserved by Contractor under this Agreement are exclusive or impose any limitations upon, or be in derogation of any right or remedy of Contractor now existing, or hereafter to exist, at law, in equity or by statute, or in the manner or time for the exercise thereof. Each and every right and remedy of Contractor under this Agreement is cumulative and in addition to all other rights and remedies of Contractor under this Agreement, now existing or hereafter to exist, at law, in equity, or by statute. Names or headings of Sections and the location of any clause shall not be construed so as to limit or restrict the purpose or intent thereof.

(c) Severability and Waiver. The invalidity of any term or provision of this Agreement, whether declared invalid by a court or otherwise, shall not affect the validity of any other term or provision hereof. The failure of Contractor to enforce any provision of this Agreement shall not constitute a waiver of the future enforcement of that provision and shall not constitute a waiver of the enforcement of any other provision.

(d) Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of California.

(e) Anti-Corruption. Subcontractor represents and warrants that no payment, offer, gift, consideration or benefit of any kind that constitutes an illegal or corrupt practice has or will be made to anyone, either directly or indirectly, as an inducement or reward for the award, execution or subsequent modification of this Agreement or as an inducement or reward for anyone acting or forbearing action in connection with the administration of this Agreement. Furthermore, neither Subcontractor or its employees or agents shall do anything in the way of making any illegal or corrupt payment or conveyance of any benefit or any other thing of intrinsic monetary value to anyone (including, without limitation, employees or representatives of Contractor or any elected or appointed public officials or other persons charged with a public duty in connection with the administration or performance of the Prime Contract). Any violation of this provision shall be a material breach of this Agreement.(f) Interpretation. Subcontractor and Contractor agree that each had an opportunity to negotiate the terms of this Subcontract and to obtain the assistance of counsel. Accordingly, this Subcontract shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

(g) Counterparts. This Agreement may be executed and delivered electronically (including by email or facsimile transmission) in one or more counterparts, each of which when executed and delivered shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

NAME
ADDRESS
ADDRESS
PHONE:
FAX:

EXHIBIT B

SPCI Job No: **xxx-xx**
Contract # **xxx**

1. Payment Schedule

Item No	Description	Unit Price	Unit Meas.	Contract Qty	Contract Amt
					$ -
					$ -
					$ -
					$ -
				TOTAL	**$ -**

2. Inclusions

Subcontractor shall perform all work required for BID ITEMS X, X, X, (hereafter the "Scope of Work") including all work, labor, tools, equipment, materials, and services required to satisfactorily and to timely complete the Scope of Work, including all items and services consistent with, contemplated by, and reasonably inferable from, the Contract Documents and/or necessary to provide a complete and fully functioning Scope of Work, whether such items and services are specifically mentioned therein, unless specifically excluded in this Exhibit B.

3. Exclusions

4. General Conditions

GENERAL CONTRACTOR
LICENSE NO. 116307 A C12
FAX: 818.362.9300

SECURITY PAVING COMPANY, INC.

3075 TOWNSGATE RD., STE 200
WESTLAKE VILLAGE, CA 91361
TEL. 818.362.9200

EXHIBIT C

Monthly Subcontractor Compliance & Payment Release Process

To ensure timely processing of monthly progress payments, all subcontractors must adhere to the following compliance and documentation requirements:

1. Draft Exhibit C Submission ("Wish List"):

Subcontractor must submit a Draft Exhibit C Form at least five (5) calendar days prior to the progress payment cut-off date established by the Owner to the assigned Project Manager.

2. Contractor Review & Quantity Confirmation:

Contractor will review the submitted Draft Exhibit C Form for accuracy and compliance. If discrepancies or disputes arise, the Subcontractor must revise and resubmit the draft in accordance with Contractor's feedback. The revised draft will be incorporated into Contractor's progress billing discussions with the Owner. Once the Owner confirms approved quantities, Contractor will relay these quantities to the Subcontractor, who must then submit a Final Exhibit C Form reflecting the approved amounts.

3. Required Documentation for Payment Processing:

After Owner approval of quantities, the Subcontractor must submit the following documentation to compliance@securitypaving.com and the assigned Project Manager:

a. Final Exhibit C Form (reflecting approved quantities)
b. Conditional Waiver and Release on Progress Payment (as provided in Exhibit F)
c. Unconditional Waiver and Release for the prior month's progress payment (as provided in Exhibit F)
d. DBE Payment Documentation, if applicable (CEM-2406 – Monthly DBE Payment Form)
e. Certified Payroll Reports must be uploaded into LCPtracker each week.
f. **For Final Payment Only**: Conditional and Unconditional Final Waiver and Release Forms (included in Exhibit F)

No subcontractor payment will be processed or approved until all required documentation is received in full and Contractor has received payment from the Owner.

Subcontractor Name
Address
City, State, Zip
Phone: XXX-XXX-XXXX
Fax: XXX-XXX-XXXX

EXHIBIT C - SECURITY PAVING COMPANY, INC.

Date: 10/30/2026
SPCI Job No:
Work Completed To:
Contract #
Est No:

CONTRACT BID ITEMS

Item No	Description	Unit Price	Unit Meas.	Contract Qty	Contract Amt	PTD Qty	PTD Amount	Current Qty	Current Amount
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
		$ -			$ -		$ -		$ -
TOTAL					**$ -**		**$ -**		**$ -**

CONTRACT CHANGE ORDERS

CCO #	Description	Bill # (if app.)	EW/LS/AC	Contract Qty	Contract Amt	PTD Qty	PTD Amount	Current Qty	Current Amount
							$ -		$ -
							$ -		$ -
							$ -		$ -
							$ -		$ -
							$ -		$ -
							$ -		$ -
							$ -		$ -
							$ -		$ -
							$ -		$ -
							$ -		$ -
TOTAL					**$ -**		**$ -**		**$ -**

MATERIAL ON HAND

Month	Description	Amount
TOTAL		**$ -**

WORK FOR SPC- OUTSIDE OF CONTRACT AND CCOS

Date	Invoice # / Description	PTD	Current
TOTAL		**$ -**	**$ -**

NOTES

SUMMARY

Item	Contract Amount	PTD	Current Amount	Remaining Balance
Contract Bid Items	$ -	$ -	$ -	$ -
CCOs	$ -	$ -	$ -	$ -
Material On Hand	$ -	-	$ -	$ -
Work for SPC	$ -	$ -	$ -	$ -
TOTAL	$ -	$ -	**$ -**	$ -

AUTHORIZED BY: _____

SIGNATURE: _____ **DATE:** _____

EXHIBIT D
INSURANCE & INDEMNIFICATION REQUIREMENTS
TO THE SUBCONTRACT AGREEMENT BETWEEN
SECURITY PAVING COMPANY, INC.,
AND

CONTRACT NO.

Security Paving Company, Inc., Job No.:

This Exhibit is attached and incorporated into the above referenced Subcontract between the parties, as the parties desire to amend said document. In the event of any conflict, inconsistency or ambiguity between the terms and provisions of this Exhibit and those of the above referenced Subcontract Agreement between the parties, this Exhibit shall govern.

Immediately send a copy of this information to your insurance broker for compliance.

1.0 Subcontractor shall, at its own expense, maintain in effect at all times during the performance of the work under the Subcontract not less than the following coverage and limits of insurance which shall be maintained under forms of policies and from companies satisfactory to Security Paving Company, Inc. and Owner. Any insurance policy that contains a Self-Insured Retention (SIR) in excess of $25,000 per occurrence shall not be acceptable without the prior approval of Security Paving Company, Inc. The insurance company must have a financial rating of at least A-VII as defined by A.M. Best Company. Copies of policies shall be provided when requested.

2.0 Workers' Compensation and Employer's Liability Insurance. Workers' Compensation insurance shall be provided as required by any applicable law or regulation. A waiver of subrogation is required. Employer's Liability Insurance shall be provided in amounts not less than:

$1,000,000 each accident for bodily injury by accident
$1,000,000 policy limit for bodily injury by disease
$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Subcontractor's employees under the U. S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

3.0 General Liability Insurance. Subcontractor shall carry Commercial General Liability insurance covering operations by or on behalf of Subcontractor, providing insurance for bodily injury liability and property damage liability for at least the minimum limits of liability indicated below and including coverage for:

(1) premises and operations;
(2) products and completed operations;
(3) broad-form contractual liability;
(4) broad-form property damage (including completed operations);
(5) explosion, collapse and underground hazards;
(6) personal injury liability/advertising injury;

3.1 A waiver of subrogation is required.

3.2 A “claims-made” policy form is not acceptable.

3.3 A “modified occurrence” policy is not acceptable.

3.4 Minimum Limits of Liability.

3.4.1 Commercial General Liability Form:

$2,000,000 each occurrence Bodily Injury and Property Damage
$2,000,000 Personal Injury
$2,000,000 aggregate for Products - Completed operations
$2,000,000 general aggregate

3.5 Per Project Aggregate. The policy must have an endorsement providing that the general aggregate limit applies separately to this project.

4.0 Automobile Liability Insurance. Subcontractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than $2,000,000 combined single limit each accident for bodily injury and property damage. This limit can be satisfied by either providing a primary policy or in combination with an excess liability policy.

5.0 Certificates of Insurance. Certificates of Insurance, as evidence of all insurance required by this Agreement, shall be furnished by Subcontractor to Security Paving Company, Inc. before any work hereunder is commenced by Subcontractor. The Certificates of Insurance shall provide that there will be no cancellation or reduction of coverage without thirty (30) days prior written notice to Security Paving Company, Inc. The words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be crossed out on the certificate.

5.1 Certificates, including additional insured endorsement, shall be furnished for five (5) years following completion of the project.

6.0 Additional Insured Endorsement and Primary Insurance Clause. The Bodily Injury and Property Damage Liability policies shall include a provision or endorsement, at least as broad as the CG2010 07 04, in combination with the CG2037 07 04, as published by Insurance Services Offices (ISO), naming as additional insured any person or organization for whom Subcontractor is required by written subcontract agreement or permit to name. The endorsement shall also provide that such insurance is primary insurance with respect to the interests of Security Paving Company, Inc. and Owner and that any other insurance maintained by Security Paving Company, Inc. and Owner is excess and not contributing insurance with the insurance requirement hereunder.

7.0 Insurance Requirements for Sub-subcontractors. The Subcontractor shall ensure that all tiers of their Subcontractors shall procure and maintain insurance in like form and amounts including the Additional Insured requirements, all as set forth in Paragraph 3.0. Copies of the certificate must be provided prior to the sub-subcontractors entering the site.

8.0 Professional Liability Exposures. A $1,000,000 Professional Liability insurance policy shall be carried if Subcontractor or their Sub-subcontractor is to provide any professional services, including but not limited to, design or design/build services to the project. Evidence of coverage in the form of a Certificate of Insurance shall be provided prior to the start of work.

9.0 Hazardous Materials/Pollution Liability

9.1 If Subcontractors or their Subcontractors are required to perform remedial hazardous material operations such as with asbestos containing materials, contaminated soil etc., they must, in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with minimum limits of $2,000,000, with continuing coverage after project completion in accordance with subsection 5.1.

9.2 Automobile Pollution Liability. If Subcontractor or their subcontractors haul hazardous waste they must carry Automobile Liability Insurance with a $1,000,000 combined single limit for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include MCS 90 coverage.0

10.0 Excess Liability. The limits required hereby can be met by either providing a primary policy or in combination with an excess liability policy, the limits of liability shall be not less than $10,000,000.

11.0 Acceptance by Contractor. The required insurance shall be subject to the approval of Security Paving Company, Inc. Any acceptance of Certificates of Insurance by Contractor, or failure of Subcontractor to provide Certificates of Insurance, shall in no way limit or relieve Subcontractor of its duties and responsibilities in this Agreement. If higher limits or other forms of insurance are required in the Subcontract Documents, Subcontractor will comply with such requirements.

INDEMNIFICATION

1.1 To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Owner and Security Paving Company, Inc, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section.

1.2 In claims against any person or entity indemnified under this Section by an employee of the Subcontractor, a Sub- subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Subcontractor or a Sub-subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

EXHIBIT E

CERTIFIED PAYROLL REQUIREMENTS

Please send one original and one copy to the attention of Tenna Sanchez at Security Paving Co., Inc., 3075 TOWNSGATE ROAD, SUITE 200, WESTLAKE VILLAGE, CA 91361. Payments will be withheld until all original payrolls are received in our office. Please forward all payroll and Certified Payroll questions to Tenna Sanchez at tsanchez@securitypaving.com.

- **LCP TRACKER IS REQUIRED**
- **DAS 140 AND DAS 142**
- **FRINGE BENEFIT STATEMENT** – SUBMIT AT THE BEGINNING OF WORK AND ANYTIME AFTER WHEN CHANGES ARE MADE
- **LIST OF EMPLOYEES WITH SOCIAL SECURITY NUMBERS** – IF NOT LISTED ON CERTIFIED PAYROLL REPORTS – STATE REQUIREMENT
- **CERTIFIED PAYROLL AND NON-PERFORMANCE REPORTS** – NUMBER EACH REPORT AND SUBMIT WEEKLY. WRITE "FINAL" ON LAST PAYROLL SUBMITTED.
- **STATE AND FEDERAL APPRENTICESHIP CERTIFICATIONS**
- **EMPLOYEE GARNISHMENTS** – PROOF OF OTHER DEDUCTIONS ON CERTIFIED PAYROLLS

- **TRUCK OWNER-OPERATOR CERTIFICATION OF OWNERSHIP IS REQUIRED TO UPLOAD IN LCP TRACKER - CEM-2510 IS NOT ACCEPTED**
- **OWNER-OPERATOR LISTING CEM-2505 (CERTIFIED PAYROLL FORM)** – LIST BOTH THE DRIVER'S NAME AND TRUCK COMPANY AND LIST CHECK NUMBERS
- **FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT FORM FHWA-1391** – SUBMIT ONCE A YEAR FOR WORK PERFORMED IN LAST WEEK OF JULY

PLEASE NOTE: PUT SECURITY PAVING COMPANIES JOB NUMBER ON ALL PAPERWORK. IF YOU ARE SUBMITTING YOUR SUB-TIER CONTRACTORS PAPERWORK, MAKE SURE AND HAVE THEM PUT YOUR NAME ON THE PAPERWORK ALSO. PAYMENTS WILL BE DELAYED IF PAPERWORK IS RECEIVED IN OUR OFFICE WITHOUT THE PROPER IDENTIFICATION.

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

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

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

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

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

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov*, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided,* That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

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

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1**. Instructions for Certification – First Tier Participants:**

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general 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 recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

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

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general 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 recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)
This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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

EXHIBIT G

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information
Name of Claimant:
Name of Customer:
Job Location:
Owner:
Through Date:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:
Amount of Check: $
Check Payable to:

Exceptions

This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:
Date(s) of waiver and release:_____
Amount(s) of unpaid progress payment(s): $_____
(4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature
Claimant's Signature:
Claimant's Title:
Date of Signature:

EXHIBIT G

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information
Name of Claimant:
Name of Customer:
Job Location:
Owner:
Through Date:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

$_____

Exceptions

This document does not affect any of the following:
(1) Retentions.
(2) Extras for which the claimant has not received payment.
(3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature
Claimant's Signature:
Claimant's Title:
Date of Signature:

EXHIBIT G

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information
Name of Claimant:
Name of Customer:
Job Location:
Owner:

Conditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check:
Amount of Check: $
Check Payable to:

Exceptions
This document does not affect any of the following: Disputed claims for extras in the amount of: $

Signature
Claimant's Signature:
Claimant's Title:
Date of Signature:

EXHIBIT G

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

Identifying Information
Name of Claimant:
Name of Customer:
Job Location:
Owner:

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions
This document does not affect any of the following: Disputed claims for extras in the amount of: $

Signature
Claimant's Signature:
Claimant's Title:
Date of Signature: