

## SUBCONTRACT AGREEMENT FOR OHIO DEPARTMENT OF TRANSPORTATION PROJECT

THIS AGREEMENT, made this 13th day of November 2023, by and between Shelly & Sands, Inc., a corporation existing under the laws and the State of Ohio, hereinafter called the CONTRACTOR, and TWIN RIVERS CONSTRUCTION CO., a Corporation of 1489 MASONIC PARK ROAD, MARIETTA, OH 45750, 740-678-1397 hereinafter called the SUBCONTRACTOR, WITNESSETH:

WHEREAS, the Contractor has heretofore entered into a contract with the State of Ohio, Department of Transportation, hereinafter called the OWNER, to perform certain labor and furnish certain materials for the construction and completion of Project No. MADISON COUNTY CR10-0.430, as per the Proposal the Plans and Addenda, the Construction and Material Specifications and all documents incorporated therein, which constitute the contract and are referred to herein as the Principal Contract.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained the parties hereto do mutually agree as follows:

### A. SCOPE OF SUBCONTRACT

1. **Work to Be Performed:** The Subcontractor shall furnish all labor, materials, equipment, tools, management, skill and instrumentalities, and all other things necessary, or in connection with the full and timely performance of all work described under Paragraph 4 of this Agreement and in strict accordance with the Principal Contract document and the conditions herein contained.

2. **Costs and Expenses To Be Paid:** The Subcontractor agrees to pay for all costs and expenses including, but not limited to, labor (including necessary overtime), materials, equipment, machinery, fuel, oil, tools, management, skill, and instrumentalities used in, or in connection with, the performance of this subcontract, when and as bills or claims therefore become due, and to furnish satisfactory evidence to the Contractor, when and if required, that he has paid all payrolls, bills, expenses, and costs of every type and nature whatsoever connected with the performance hereof.

3. **Incorporation of Principal Contract:** The Principal Contract has been read by the Subcontractor, and the Subcontractor agrees to be bound to the Contractor by the terms and conditions of all documents forming a part of the Principal Contract, and to assume toward the Contractor all the obligations and responsibilities that the Contractor assumes in and by the Principal Contract toward the Owner, insofar as they are applicable to this particular Subcontract, unless any terms or conditions are substituted or added by this agreement, in which event the conditions herein shall apply, together with the conditions of the Principal Contract, and should there be any inconsistency between the terms herein and the terms of the Principal Contract, the terms herein shall control, together with the terms of the Principal Contract which have not been altered or changed hereby. In the

event of any changes or alterations in plans and specifications of the said Principal Contract, the Contractor shall notify the Subcontractor of said changes or alterations, and the Subcontractor will, thereupon, be bound and governed by the specifications pertaining to said changes or alterations. No extra work or changes will be recognized or paid for unless agreed to by the Owner.

4. **Description of Work:** The Subcontractor agrees to perform, furnish and finish in a thorough and workmanlike manner, under the direction and to the satisfaction of the Owner, and the Contractor, the following work, materials, acts, and things to be done and agrees to accept the prices set forth herein in full payment for each items of work, materials, acts and things done.

Item	Contract Item	Description	Quantity	UM	Unit Price	Extended Price
17	17. 1.	SEALING OF CONCRETE SURFACES (NON-EPOXY)	128.000	SY	20.00000	2560.00
32	32. 1.	SPECIAL - STEEL DRIP STRIP	334.000	LF	14.50000	4843.00

**Total**

**\$ 7,403.00**

Notes:

5. **Final Estimate Quantities:** The final quantities are to be determined from the final estimate of the Owner. If the aggregate quantities of work allowed to the Subcontractor by the Contractor on any partial payment estimates are greater than the actual final quantities of Work as determined by the Owner, then the Contractor may either deduct from any amount retained or from any subsequent payment the amount of money represented by such reduction or may otherwise recover same from the Subcontractor.

## B. PAYMENT

6. **Partial Payments:** (A) If satisfactory progress is being made, Contractor shall pay to Subcontractor monthly payments (semi-monthly if so paid by the Owner) within ten (10) days after the Contractor receives payment from the Owner based upon the volume of work and materials in place in accordance with the quantities applicable to this Agreement allowed on estimates approved by the Owner, at the prices specified in this Agreement, less the retained percentage withheld. In the event that said Principal Contract does not provide for retained percentages, the Contractor may at its option retain ten percent on each payment. The balance is to be paid to the Subcontractor within ten (10) working days after the final completion and acceptance by the Architect and Owner. The Subcontractor agrees that the Contractor shall be under no obligation to pay the Subcontractor for any work done on this construction project until the Contractor has been paid therefore by the Owner unless the reason for the Owner not paying is the fault of the Contractor and not the Subcontractor. The Subcontractor states that he relies primarily for payment for work performed on the credit and ability to pay of the Owner, and not the Contractor. The Subcontractor agrees that the liability of the surety on Contractor's payment bond, if any, for payment to the Subcontractor is subject to the same conditions precedent as are applicable to the Contractor's liability to the Subcontractor.

(B) Should any defective work or material or acceptable work that has been damaged by Subcontractor's operations be discovered prior to the final acceptance, or should a reasonable doubt arise prior to the final acceptance as to such work or the integrity of any part of the completed work, the estimate and payment for such defective or questioned work shall not be allowed until the defect has been remedied or the cause for doubt removed. Contractor shall not be required to make any payment or any partial or final estimate at any time while Subcontractor is in default under this Agreement. Should overpayments be made for any reason, Subcontractor agrees to promptly return same.

(C) Partial payments may be made to the extent of the delivered cost of approved materials to be incorporated in the work, when delivered on the project or stored in acceptable storage places under control of the Contractor in the vicinity of the project, providing such payments are allowed by the Owner. Payment will be made for materials stored off-site, if payment is received from the Owner to the Contractor and providing either the storage site is under the control of the Contractor or ultimate delivery of materials to the jobsite is protected by the Subcontractor's performance bond or a specific performance or supply bond, if required by the Contractor.

(D) Contractor may deduct from any amounts due or to become due to Subcontractor sums equal to any indebtedness owed by Subcontractor for labor or material or equipment or any other obligations of Subcontractor on this Project for which Contractor may be liable or as to which Contractor has received notice from Subcontractor or from any claimant. In the event of any breach by Subcontractor of any provisions or obligation of this Subcontract, or in the event any sums are due Contractor from Subcontractor resulting from any other transactions Contractor shall have the right to retain out of and deduct from any payments due or to become due to Subcontractor an amount sufficient to completely protect Contractor from any and all loss, damage or expense there from, until the Subcontractor has satisfactorily remedied the problem to the satisfaction of the Contractor.

7. **PAYMENT OF FINAL ESTIMATE—RELEASE:** (A) The final amount of money to be paid the Subcontractor shall be computed by multiplying the final estimate of quantities as rendered by the Owner times the unit price of such items as set forth in Paragraph 4 of this Agreement, plus any lump sum items, less the total amount of partial payments previously made. On or before ten (10) days after Contractor is paid his final estimate by the Owner, he shall pay to Subcontractor his final estimate under this Agreement.

(B) The acceptance, by deposit or otherwise, by Subcontractor of the payment of the final estimate shall be a release in full of all claims of each party hereto against all parties hereto arising under, out of or by reason of this Subcontract or any modification thereof, except (1) any claim of Subcontractor being processed as provided in Paragraph 9 hereof, and (2) any claim presented by Subcontractor to Contractor in writing prior to the payment of said final estimate and designated to be excepted from the operation of said release.

8. **Liability for Loss, Damage and Delay:** The Contractor shall not be responsible to the Subcontractor for any loss, damage or delay of any type or nature caused by the Owner or any other subcontractor or material man other than for such amounts as the Owner or such other subcontractor or material man shall be liable to and shall pay to the Contractor, such loss, damage, or delay to be determined as if this subcontract provision did not exist, including any amounts found due under any disputes clause of the Principal Contract. In case of any dispute between the Subcontractor and Contractor involving the Owner, Subcontractor agrees to be bound to the contract to the same extent that the Contractor is bound to the Owner by the terms of the Principal Contract and by any and all decisions or determinations made there under by the party or board so authorized in the Principal Contract or by any contract of competent jurisdiction whether or not the Subcontractor is a party to such proceeding. The Contractor agrees to present to the Owner all of Subcontractor's claims involving the Owner whenever the Contractor is permitted to do so by the terms of the Principal Contract and to further invoke, on behalf of the Subcontractor, those provisions in the Principal Contract for determining disputes. The subcontractor agrees to furnish all documents, statements, witnesses and other information required by the Contractor for such purpose and pay or reimburse Contractor for all expenses and costs incurred in connection therewith. In the event the Owner makes an award to the Contractor on a claim which does not identify or allocate an amount to the Subcontractor, the Contractor shall make a reasonable allocation to the Subcontractor a portion of the final award.

9. **Indemnity:** Subcontractor agrees to indemnify, protect and save the Contractor harmless and defend from any and all actions, lawsuits, claims, costs, loss, damage, or liability of any kind or nature, including damage to property, even if owned, leased or used by the Subcontractor, or of injuries to persons, including death, whether employees of Subcontractor or others, and including fines, penalties, and costs of corrective measure for failure to comply with any safety or other governmental rules or regulations, when such liability results from or on account of any act or omission of Subcontractor or any of his officers, agents, employees or servants. This provision shall not indemnify and hold harmless the Contractor from and against such actions, lawsuits, claims, costs, loss, damage or liability which shall have been initiated or proximately caused by or resulting from the negligence of the Contractor or its officers, agents, employees or servants.

## C. PERFORMANCE

10. **Time of Performance – Liquidated Damages:** The Subcontractor agrees to commence the work contracted for within five (5) calendar days after being notified by the Contractor to do so, and to complete its work to the satisfaction of the Owner or its representative within the time scheduled by the Contractor, as may be changed from time to time. All labor (including overtime), materials, equipment, etc. necessary to meet the schedule outlined by the Contractor, shall be the responsibility of the Subcontractor. Time is of the essence in performance and completion of this Agreement. If liquidated damages provided for in the Principal Contract for failure to complete the work within the specified time shall be assessed against the Contractor by reason of the Subcontractor's failure to complete its work on time, Contractor shall have the right to recover the amount of such damages from Subcontractor and may deduct such amount from any monies due or which may become due to the Subcontractor.

11. **PROSECUTION OR TERMINATION OF WORK:** If the Subcontractor becomes insolvent, or if a petition in bankruptcy is filed by or against it, or should it make a general assignment for the benefit of

creditors, or should a receiver be asked or appointed, or should it refuse or fail, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials, or disregard laws, regulations, ordinances or instructions of the Contractor or otherwise be guilty of a substantial violation of any provision of the subcontract, or should the Subcontractor at any time refuse to start the work promptly, neglect to supply sufficient number of properly skilled workmen or sufficient materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or if the Subcontractor becomes involved in any labor difficulties or work stoppage caused by strike, picketing, boycott, or by refusal of employees of the Subcontractor to cross the picket line or any other voluntary or involuntary cessation of work by the employees of the Subcontractor which in the judgment of the Contractor will cause, or is likely to cause, delay in the construction of the work, or if the Subcontractor should fail in the performance of any of the agreements contained herein, the Contractor may, without prejudice to any other right or remedy, after forty-eight hours written notice to the Subcontractor, cause its right to proceed with the work to be terminated, provide such labor and materials, and deduct the costs thereof and any money then due or which thereafter become due the Subcontractor under the subcontract. If Subcontractor's right to proceed is so terminated, Contractor may take possession of and utilize in completing the work such materials, equipment and supplies as may be on or near the site of the work and suitable therefore. In any such case of termination of the right to proceed the Subcontractor should not be entitled to any further payment until the said work shall be wholly finished, at which time, if the unpaid balance of the amount of the subcontract shall exceed the expenses incurred by the Contractor in finishing or causing the work to be finished as well as all other charges, expenses or damage incurred in connection therewith, such excess shall be paid by the Contractor to the Subcontractor. If such expenses and damage exceed the unpaid balance, Subcontractor shall pay the difference to the Contractor.

The Contractor may terminate or suspend this contract or a portion thereof, by written notice to the Subcontractor, when the principal contract or an applicable part thereof has been terminated or suspended by the Owner. In such event, Subcontractor shall be bound to the Contractor in accordance with the terms and procedures set forth in Paragraph 9 herein. Termination or suspension of this contract or a portion thereof shall not relieve the Subcontractor of its responsibilities for the completed work.

12. **Prosecution in Event of Dispute:** The pendency of any dispute arising under or in any way relating to this Subcontract shall not relieve Subcontractor of the duty to proceed diligently with all work to be performed by him under this Agreement, unless Contractor shall have terminated Subcontractor's right to proceed as provided in the preceding paragraph.

13. **Coordination:** The Subcontractor agrees to perform and coordinate his work with that of the Contractor and other subcontractors to the best interests of the work as a whole, as determined by the Contractor, and shall have no claim against Contractor for extra compensation on account of delays, interference or hindrance caused by the Contractor or other contractors or subcontractors in the performance of their respective items of work.

14. **Sub-Subcontracting; Assignment:** The Subcontractor agrees not to sublet, assign or transfer this Subcontract, or any part thereof, without first obtaining the written consent of the Contractor.

## D. INSURANCE AND BONDS

15. **Insurance:** Before commencing work under this Agreement, the Subcontractor shall furnish to the Contractor policies or certificates of insurance in evidence of coverage of the following:

- a) Current Worker's Compensation certificate showing the Subcontractor to be a complying employer and the evidence of Employers Liability (Stop Gap) Coverage when required by law. (i.e. Ohio)
- b) Commercial General Liability including but not limited to: Products Completed Operations **Each Occurrence** \$1,000,000 and \$2,000,000 Aggregate: as well as a per project aggregate endorsement; Personal & Advertising Injury and Medical Expenses \$1,000,000.

- c) Comprehensive Automobile Liability including bodily injury and property damage \$1,000,000
- d) Excess/Umbrella Commercial Liability \$1,000,000 each occurrence
- e) Subcontractor shall name the Contractor as Additional Insured with regard to the work performed by subcontractor on a primary and non-contributing basis for all work performed by the Subcontractor not to terminate when work is completed. An endorsement verification is required **ISO CG 20 10 10 01 and CG 20 37 10 01.**

Automobile liability insurance is to be in direct and contingent form, that is, direct on automobile equipment owned by the Subcontractor and contingent on the automobile equipment hired by him, and Subcontractor must furnish Contractor with an Owner's Protective Policy. Insurance must not be subject to change or cancellation in less than thirty (30) days after receipt of notice by the Contractor.

16. **Bonds:** The Subcontractor shall furnish to the Contractor, if required by the Contractor, a corporate surety payment and performance bond in conformity to this Subcontract, on a form provided by the Contractor, and with surety acceptable to the Contractor, in a sum or sums equal to one hundred (100%) percent of the total contract price sublet hereunder. The premium shall be paid by the Contractor unless made a part of the bid price by the Subcontractor or the Subcontractor had been advised by Contractor to include this item in its bid price.

## E. MISCELLANEOUS

17. **UNION CONTRACTS:** The Subcontractor shall be bound by the terms, conditions and wage rates contained in any and all collective bargaining agreements to which Contractor is a party or to which said Contractor is bound, unless the Contractor waives the provisions of this section in writing or unless the rates are less than the prevailing wage rates set forth in the Principal Contract, in which event the latter shall apply.

Notwithstanding anything in this Agreement to the contrary, in the event a union with whom the Subcontractor has an agreement or who represents the Subcontractor's employees involved in a labor dispute or in the event of a labor dispute with the Contractor or with Contractors who are members of the Contractor's multi-employer bargaining unit, which results in a work stoppage, either by strike or lockout of the Contractor's employees or of employees of such Contractors, the Contractor may, upon written notice to the Subcontractor, require the Subcontractor to suspend the performance of all or part of his work until such labor dispute is resolved, without payment of any extra costs, expenses or damages resulting from such suspension.

18. **Compliance With Laws:** The Subcontractor agrees to comply with all federal, state and local laws, executive order, codes and regulations and all municipal ordinances and regulations effective where the work is to be performed under this Subcontract, and to pay all fees, taxes, including sales and use taxes imposed by any state or federal law for any employment insurance, pensions, old age retirement funds or any similar purpose and to obtain and pay for any and all licenses and permits necessary for proper completion of the work. The Subcontractor shall be responsible to the Contractor for compliance with all safety rules and regulations, of the Federal Safety and Health Act of 1970, during the conduct of Subcontractor's performance on and in connection with this project. Where applicable, Subcontractor shall furnish Contractor copies of assurances and other documents in such form as may be required by said laws, rules, regulations or executive orders. In the event the Subcontractor shall fail or refuse to furnish such copies, where applicable, then this Agreement may, at the option of the Contractor and in accordance with the provisions of Article 12, be declared null and void and of no effect, and the said Contractor is hereby authorized without liability or obligation to the Contractor, to relet the work described herein to any other person, firms, or corporation it so chooses. Where required by applicable law, rules, regulations or executive orders, equal opportunity provisions\* shall be included herein as a part of this Subcontract and shall be included by the Subcontractor in all lower tier subcontracts and material contracts entered into by Subcontractor. On federally-assisted construction projects, a certificate of

nonsegregated facilities (see next paragraph) shall be included herein as a part of this subcontract, and Subcontractor agrees to obtain and retain in its file identical certificates for all lower tier subcontracts exceeding \$10,000 and all supply and raw material contracts exceeding \$100,000 entered into by Subcontractor.

**CERTIFICATE OF NONSEGREGATED FACILITIES:** The Subcontractor, by execution of the Subcontract Agreement, certifies that it does not maintain or provide for the employees any segregated facilities at any of its establishments, and that it does not permit their employees to perform their services at any location, under their control, where segregated facilities are maintained. The Subcontractor certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit the employees to perform their services at any location, under their control, where segregated facilities are maintained. The Subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms, and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise.

**19. Owner Approval of Subcontract:** If the Principal Contract requires that Subcontract Agreements shall be approved by the Owner, this Subcontract Agreement shall become valid only upon such approval.

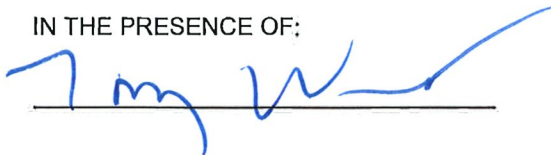
**20. Applicable Law:** The laws of the State of Ohio shall govern as to all questions arising under this Subcontract Agreement.

**21. Entire Contract:** It is agreed that the terms and conditions of this Agreement are fully covered in the foregoing, and that any oral or written statements made by either party, or agents claiming to represent either party, not set forth herein, are not binding on the parties and are not to be considered as a part of this Contract.

\*See Special Provisions on page 8 of this contract.

IN WITNESS WHEREOF, the Contractor and Subcontractor have executed this Subcontract on the day and year first above written, by their proper officers or agents, duly authorized in the premises.

IN THE PRESENCE OF:

  
\_\_\_\_\_

**Shelly & Sands, Inc.**

Contractor

By 

Title Contract Admin.

IN THE PRESENCE OF:

  
\_\_\_\_\_

**TWIN RIVERS CONSTRUCTION CO.**

Contractor

By 

Title PRESIDENT

### SPECIAL PROVISIONS

1. Appendix A-Safety & Insurance Addendum is attached to and made part of this Subcontract.
2. Subcontractor agrees to submit certified copies of payrolls as required by Federal Aid Highway Contract Provisions.
3. Subcontractor agrees to submit Form PR-1391 for the first three (3) months of work and for the month of July.
4. Subcontractor agrees to submit the State of Ohio Input Form 29 monthly while they have a work force on the project.
5. Failure to timely comply with the requirements in Paragraphs 3, 4, and 5, Special Provisions, will result in the deletion of Paragraph 6, Partial Payments, in its entirety. No payments will be made to Subcontractor until all required reports are current. Should a Subcontractors' failure to submit timely reports cause estimates to be withheld by the Owner a charge of 1 – ½% per month (18% per year) will be made to the Subcontractor on the total amount of all funds withheld by the Owner.
6. Bond is NOT required.
7. Appendix B-State Equal Employment Opportunity Covenant is attached to and made a part of this Subcontract.
8. Physically attach to the Subcontract one of the following copies of "Required Contract Provisions Federal-Aid Contracts" available in printed form from the Department of Highways, Contract Sales, Highway Building, Columbus, Ohio, or any division office, according to the following schedule and set forth in the Bid Proposal:
  - (a) Interstate Projects: Orange Form PR-1273
  - (b) Primary Projects: Green Form PR-1274
  - (c) Secondary Highways (not under Secondary Road Plan): Yellow Form PR-1275
  - (d) Secondary Road Plan Projects: Blue Form PR-1276
  - (e) Appalachian Projects: White Form PR-1316
9. Physically attach Paragraphs 1 through 8 of the State Equal Employment Opportunity Covenant of the Governor's Executive Order of the State of Ohio, dated January 27, 1972.

### APPENDIX A

#### SAFETY AND INSURANCE ADDENDUM

### RELATIONSHIP OF PARTIES

Both Shelly & Sands, Inc. and Subcontractor agree that Subcontractor and its employees and agents are providing services as an "Independent Contractor" and that neither Subcontractor, nor its agents or employees can be considered employees of Shelly & Sands, Inc. for any purpose whatsoever. Shelly & Sands, Inc. shall not withhold any federal or state taxes, including income taxes, employee taxes, FICA and FUTA taxes, all such payments being the sole responsibility and duty of the Subcontractor.

## REPRESENTATIONS AND WARRANTIES

Subcontractor hereby warrants, agrees and represents to Contractor, as an express condition of contract, the following:

- A. That Subcontractor maintains worker's compensation coverage and insurance for any of its employees and agents on the job site, or who will provide work under this agreement and that Subcontractor shall produce certification of this workers' compensation coverage acceptable to Contractor.
- B. That Subcontractor has or will obtain liability insurance to cover any of its employees or agents who are on the job site and/or are performing work under this agreement, and that Subcontractor will provide Contractor with evidence of this insurance acceptable to Contractor. Further, this insurance shall also include Contractor and its agents or employees as additional "insured's" under Subcontractor's liability policy for all work performed pursuant to this agreement and Subcontractor shall furnish Contractor with a certificate, declarations page or a complete policy of liability insurance showing such inclusion.
- C. The Subcontractor shall deliver the above original certificates of insurance and all applicable liability insurance policies and declarations pages before providing work under this agreement.
- D. That every agent, employee of Subcontractor or of Subcontractor's lower tier subcontractors that will be on the job site and/or performing work under this agreement:
  1. Is properly trained in the recognition and avoidance of safety hazards that could conceivably apply to this work site, Sub -contractor's job tasks or process;
  2. If required to perform a specific job task or to operate a particular piece of equipment, that each employee is certified to operate the equipment and/or has received specific task training applicable to the job task (e.g. crane operation);
  3. Has received hazard communication, lockout/tagout, confined space training and instruction, will review the Material Safety Data Sheets and hazard communication instructions for all materials or substances to be used on the job site and/or for work performed under this agreement (including materials from other contractors or subcontractors on this job site); and
  4. If trenching and shoring is involved, will provide a "competent person" as defined by 29CFR 1926.650 and its subparts and will ensure that the competent person and other workers working in or around any excavation, trench or opening be trained in and understand OSHA's soil classification tests and safe means to work in excavations as required by 29CFR 1926.650, 29CFR 1926.651 and 29 CFR 1926.652.
  5. Has reviewed and will abide by OSHA's interim lead standard as applied to construction operations.
  6. Has reviewed and will abide by OSHA's new 6 foot fall protection standard, 29CFR 1926.500, et seq., effective February 9, 1995.
- E. Subcontractor will ensure that employees or agents wear and use necessary and appropriate personal protective equipment for the job task.
  1. If Subcontractor's job entails roadway construction work, subcontractor will ensure that its employees who are exposed to vehicular traffic abide by all federal, state and local laws pertaining to the need for high visibility apparel.
  2. Further, Subcontractor will comply with 29CFR 1926.201 and 1926.202 and will provide appropriate flagmen, signs, signals and barricades and other traffic control devices necessary

to protect employees from vehicular traffic. Traffic control devices will be in conformance with those called for by Ohio's Uniform Manual for Traffic Control Devices.

- F. Subcontractor will provide copies of its 300 log, safety manual, MSDS sheets and hazard communication materials on the job site, and make them available for review.
- G. For any equipment or machinery used by Subcontractor and/or its employees or agents on the job site, Subcontractor will ensure the equipment is in safe operating condition.
- H. If Subcontractor is an Ohio company or is performing work under this agreement in Ohio, Subcontractor agrees that Subcontractor, its employees and agents will review, and abide by the Specific Safety Requirements of the Industrial Commission of Ohio, as contained in Ohio Administrative Code Chapter 4121.
- I. Subcontractor agrees that Subcontractor and/or its agents and employees will immediately notify Contractor or its agents of any potential hazards or safety concerns discovered on the job site and will not allow Subcontractor's employees or agents to continue work until the hazard or safety concern is addressed and rectified.
- J. If Contractor or other entities notify Subcontractor of a potential hazard or safety concern which Contractor has created or has the ability to correct, Subcontractor will address and correct the hazard or safety concern.
- K. The Subcontractor is a (sole proprietorship, partnership, corporation) duly organized, validly existing and in good standing under the laws of the State of Ohio. The Subcontractor also represents that it has the full legal right and power and all authority and approval required to enter into this agreement and to perform fully its obligations hereunder.

Contractor and Subcontractor both expressly acknowledge that Contractor has the right but not the contractual duty to monitor Subcontractor's work for purposes of overall safety. The parties further acknowledge that Contractor's right to monitor the job site and to monitor Subcontractor's work practices and activities does not constitute "active participation" by Contractor in Subcontractor's work activities.

Failure of Subcontractor and/or any of its agents, employees or lower tier subcontractors to comply with any provision of this agreement constitutes a default hereunder and is grounds for Contractor to immediately void this agreement in addition to its other remedies at law or in equity. All warranties and representations set forth in this agreement shall continue from the date hereof and shall survive the completion of the work to be performed by the Subcontractor.

## **INDEMNITY**

If Contractor is cited by the Occupational Safety and Health Administration under OSHA's multi-employer workplace provisions or general duty clause (whether cited under 29 CFR 1910 or 1926) for hazards and unsafe working conditions caused, created or allowed to exist by Subcontractor and its employees or agents, or is otherwise cited or charged by any other governmental or regulatory authority, Subcontractor will indemnify and hold Contractor harmless and will pay Contractor for Contractor's costs to defend against the citations and/or contest, settle or negotiate the citations, including attorney's fees and all other losses, liabilities, damages, claims, expenses or deficiencies related thereto.

## **APPLICABLE LAW/VENUE**

This agreement shall be governed, interpreted and in accordance with the statutes and laws of the State of Ohio. Any lawsuit over this agreement shall be venued exclusively in courts located in the State of Ohio.

**APPENDIX B**  
**STATE EQUAL OF EMPLOYMENT OPPORTUNITY COVENANT**  
**(For State Contracts)**

*"During the performance of this contract, the contractor agrees as follows"*

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, disability or age. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, ancestry, sex, disability or age. Such action shall include, but is not limited to, the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, national origin, ancestry, disability or age.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the contracting officer, advising the labor union or worker's representative of the Contractor's commitments under Section 202 of the Directors of Department of Public Works Rule and Regulation on Equal Employment Opportunity, (hereinafter referred to as "DPW Regulation on EEO"), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of the DPW Regulation on EEO, and of the implementing rules, regulations, and applicable order of the State Equal Employment Opportunity Coordinator.

(5) The Contractor agrees that it will fully cooperate with the State Equal Employment Opportunity Coordinator, with any other official or agency of the State or Federal Government which seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under this contract, and said Contractor shall comply promptly with all requests and directions from the State of Ohio or any of its officials and agencies in this regard, both before and during performance.

(6) Full cooperation as expressed in clause (5) above, shall include but not be limited to, being a witness and permitting employees to be witnesses and complainants in any proceeding involving questions of unlawful employment practices, furnishing all information and reports required by employment practices, furnishing all information and reports required by the DPW Regulations on EEO, and by the rules, regulations, and orders of the State Equal Employment Opportunity Coordinator pursuant thereto, and permitting access to his books, records and accounts by the Contracting Agency and the State Equal Employment Opportunity Coordinator for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or order, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further State Contracts in accordance with procedures authorized in the DPW Regulation on EEO, and such other sanctions may be imposed and remedies instituted as provided in said Regulation or by rule, regulations, or order of the State Equal Employment Opportunity Coordinator or as otherwise provided by law.

In the event this contract is terminated for a material breach of said Regulation, the Contractor shall become liable for any and all damages which shall accrue to the State of Ohio as a result of said breach.

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(8) The Contractor will include the provisions of Paragraphs 1-8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the State Equal Employment Coordinator issued pursuant to Section 204 of the DPW Regulation on EEO, so that such provisions will be binding upon each Subcontractor or vendor.

The Contractor will take such action with respect to any subcontract or purchase order as the Contracting Agency may direct as a means of enforcing such provisions including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor, vendor, or other party as a result of such direction by the contracting agency, the Contractor may request the State of Ohio to enter into such litigation to protect the interest of the State.

Sincerely,

SHELLY AND SANDS, INC.

COLBY J. GRAHAM

President

MYRA JOHNSON

EEO Officer

*Amendment to the Subcontract Agreement as of October 26, 1994:  
The Equal Opportunity and Affirmative Action Clause at 41 CFR 60-1.4 (A) Is Herein Incorporated By  
Reference.*

**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](mailto: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](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

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

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

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

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

## 2. Withholding (29 CFR 5.5)

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

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

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

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

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

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

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

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

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

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

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

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

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

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

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

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

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

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

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

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

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

(3) *Required information disclosures*. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; 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 procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901-3907](#).

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.

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

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

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

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**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.

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**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.

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**XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

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