

Department of Engineering  
Tim Bryan, P.E., PTOE, County Engineer

3137 South Liberty Street, Canton, MS 39046  
Office (601) 855-5582 FAX (601) 859-5857

**MEMORANDUM**

March 15, 2024

To: Casey Brannon, Supervisor, District I  
Trey Baxter, Supervisor, District II  
Gerald Steen, Supervisor, District III  
Karl Banks, Supervisor, District IV  
Paul Griffin, Supervisor, District V

From: Tim Bryan, P.E., PTOE  
County Engineer

Re: Permission to Subcontract  
STP-60055-02(208)LPA/105278-701000  
Reunion Parkway, Phase 2 Project Subcontract Requests

The Engineering Department requests that the Board allow Hemphill Construction Company to subcontract work to the following subcontractor:

- Site Support Group

and to authorize the Board President to sign the form for the subcontract.

Local Public Agency: \_\_\_\_\_

**REQUEST FOR PERMISSION TO SUBCONTRACT**

Request No. \_\_\_\_\_

Contract No. \_\_\_\_\_

\_\_\_\_\_

County

Gentlemen:

I [We] [the prime contractor] [a subcontractor] propose to subcontract the following items to \_\_\_\_\_, named in accordance with Special Provisions providing for subcontracting included in our contract. In the event of your disapproval of this subcontractor or your disapproval of performance of such subcontractor at any time, I [we] agree to perform such items of work with my [our] own organization in full compliance with all applicable terms of our contract. I [we] agree that this procedure will not relieve us of any of the responsibilities under our contract.

It is agreed and understood that the approval or disapproval of the subcontractor and approval or disapproval of the performance of subcontractor does not create or impute any liability or contractual obligation by and between the subcontractor and the Local Public Agency.

I [We] the prime contractor agree that this procedure will not relieve us of any of the responsibilities and obligations of our contract and I [we] shall indemnify and save harmless the Local Public Agency from all claims, demands, suits, damages, costs, and expenses and loss [including attorney's fees] arising or resulting from this subcontract.

I [We] certify that said party is particularly experienced and equipped for such work and that the subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract and that all pertinent conditions and requirements of our contract with the Local Public Agency covering this project have been explained to the proposed subcontractor and that when applicable federally required contract provisions are physically incorporated into the agreement furnished to the subcontractor.

I [We] have attached a copy of said subcontract to this request.

I [We] have attached the completed LPA forms NRAA-1, and SCC-1 for Federal Aid projects.

The prices shown below are the prime contract unit prices:

ITEM	QUANTITY	UNIT	PRIME CONT. UNIT PRICE	AMOUNT
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____
_____	_____	_____	\$ _____	\$ _____

I [We] hereby certify that the persons or firms named above as subcontractors was with the knowledge and consent of the persons or firms named.

Date February 15, 20 24

Hemphill Construction Company, Inc.

Contractor

By:  Signature

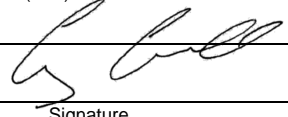
Address: \_\_\_\_\_

I [We] hereby certify that the use of our names as subcontractors on the above items, was and is with our knowledge and consent.

Date \_\_\_\_\_, 20 \_\_\_\_\_

(Sub) Subcontractor

Federal Tax ID: \_\_\_\_\_

By:  Signature

Address: \_\_\_\_\_

Total This Request \$ \_\_\_\_\_ = \_\_\_\_\_ %

Previous Request \$ \_\_\_\_\_ = \_\_\_\_\_ %

Total To Date \$ \_\_\_\_\_ = \_\_\_\_\_ %

Quantities Checked: \_\_\_\_\_

Approval Recommended: \_\_\_\_\_, 20 \_\_\_\_\_

CE&I Engineer / Architect

Approved: \_\_\_\_\_, 20 \_\_\_\_\_

Chief LPA Official (Signature)

NOTE: The subcontract items of all subcontracts shall not exceed 60% of the total contract amount exclusive of specialty items. Please submit signed original documents on all requests.

Line No.	Pay Item No.	Quantity	Unit	Description	PRIME CONT. UNIT PRICE	AMOUNT	CONTRACTOR
130	213-C001	14	TON	Superphosphate	\$ 800.00	\$ 11,200.00	SSG
140	216-A001	670	SY	Solid Sodding	\$ 7.00	\$ 4,690.00	SSG
150	217-A001	1250	SY	Ditch Liner	\$ 2.50	\$ 3,125.00	SSG
200	224-A001	500	SY	Soil Reinforcing Mat	\$ 4.50	\$ 2,250.00	SSG
210	225-A001	27	ACRE	Grassing	\$ 1,511.50	\$ 40,810.50	SSG
220	225-B001	14	TON	Agricultural Limestone	\$ 203.50	\$ 2,849.00	SSG
230	225-C001	54	TON	Mulch, Vegetative Mulch	\$ 465.00	\$ 25,110.00	SSG
240	226-A001	27	ACRE	Temporary Grassing	\$ 436.00	\$ 11,772.00	SSG
250	907-234-A001	16950	LF	Temporary Silt Fence	\$ 3.50	\$ 59,325.00	SSG
280	245-A001	310	LF	Silt Dike	\$ 13.00	\$ 4,030.00	SSG
290	246-A002	22	EA	Sandbags	\$ 35.00	\$ 770.00	SSG
300	246-B001	22	EA	Rockbags	\$ 40.50	\$ 891.00	SSG
1120	620-A001	1	LS	Mobilization- Site Support Group	\$ 3,000.00	\$ 3,000.00	SSG
<b>Total</b>						<b>\$ 169,822.50</b>	

\$ 31,961,800.00

0.531%

**MOBILIZATION BREAKDOWN**

STP-0055-02(208) LPA/105278-701000

MADISON COUNTY, MISSISSIPPI

REF. NO.	PAY ITEM NO.	APPROX QUANT.	UNIT	DESCRIPTION	UNIT COST	ITEM TOTAL
1120	620-A001		LS	Mobilization		\$2,105,148.30
				<b>Site Support Group</b>	H23121A-101	\$ 3,000.00
				<b>Dickerson and Bowen</b>	H23121A-102	\$ 171,900.00
				<b>A1 Sealing</b>	H23121A-104	\$ 2,509.00
				<b>A1 Sealing</b>	H23121B-104	\$ 2,200.00
				<b>Simmons</b>	H23121A-105	\$ 7,425.00
				<b>Simmons</b>	H23121B-103	\$ 111,127.50
				<b>Simmons</b>	H23121C-xxx (TBD)	\$ 3,960.00
				<b>Lane Line</b>	H23121A-106	\$ 11,460.00
				<b>Russo</b>	H23121B-101	\$112,798.00
				<b>Hemphill Construction Co. Inc.</b>		\$ 1,678,768.80
				<b>TOTAL BID PRICE</b>		<u>\$ 2,105,148.30</u>

P.O. Drawer 879  
Florence, MS 39073-0879



Phone: 601-932-2060  
Fax: 601-932-2550

Municipal & Public Works Construction

Heavy & Highway Construction

Date: 02/15/2024

To: Site Support Group  
PO Box 3011  
Ridgeland, MS 39158

Attention: Clay Cromwell

Project: Madison County - Board of Supervisors  
Reunion Ph.2,STP-0055-02(208)LPA105278-701000, Madison Co,MS  
,  
Subcontract No. H23121-A101

Enclosed please find your Subcontract Package for the above referenced project. No subcontractor will be allowed to perform any work, and the Notice to Proceed will not be issued, until the Subcontract has been fully executed, the proper insurance certificates, crews have been safety oriented by Hemphill Construction's safety department, and all other required documents, have been received by our office. Any delay in receipt of your Certificate of Insurance, or any other required documents, will not be excusable and may result in damages being assessed against your company.

All Subcontractors must bill Hemphill Construction Company Inc. on the attached invoice for payment to be made. If certified payroll is required, you must notify accounts payable prior to any work. Certified payroll must be received before any payments will be paid. **Pay special attention to the Payment Section 5. It is of the utmost importance that these instructions be followed. Failure to follow these instructions will delay payment of your invoice.**

Very truly yours,

Hemphill Construction Company Inc.

A handwritten signature in cursive script that reads "Samantha Brown". The signature is written in black ink and is positioned above the printed name and title.

Samantha Brown  
Subcontract Administrator

Direct Telephone: 601-326-9143  
Email: [Sub@hemphillconstruction.com](mailto:Sub@hemphillconstruction.com)

P.O. Drawer 879  
Florence, MS 39073-0879



Phone: 601-932-2060  
Fax: 601-932-2550

Municipal & Public Works Construction

Heavy & Highway Construction

## SUBCONTRACT INSTRUCTIONS

Date: 02/15/2024

To: Site Support Group  
PO Box 3011  
Ridgeland, MS 39158

Attention: Clay Cromwell

Project: Madison County - Board of Supervisors  
Reunion Ph.2,STP-0055-02(208)LPA105278-701000, Madison Co,MS  
,  
Subcontract No. H23121-A101

Before you are allowed to proceed with your Work on the Project, you must complete the following:

**1. GENERAL**

- a. Please use Docusign to sign the following Subcontract. If you wish to sign by paper, please use the "Print and sign" function within Docusign.
- b. Initial all pages and sign the last page of the Subcontract via Docusign.
- c. Initial all pages and sign the last page of Hemphill Construction Company Inc. Safe Practices via Docusign.
- d. Attach a Certificate of Insurance, naming Hemphill Construction Company Inc. as Additional Insured and a waiver of subrogation on worker's compensation. The Certificate must state the job location. Please refer to Section 6 of the Subcontract Agreement for specific instructions.
- e. Sign the Notice to Proceed via Docusign.
- f. Attach your signed and notarized E-Verify Number Form. (Refer to attached E-Verify Package.)
- g. If you must return the subcontract package by mail, please print and sign 3 copies and mail to:  
Hemphill Construction Company Inc.  
Attn: Samantha Brown  
PO Drawer 879  
Florence, MS 39073-0879

**2. CONTRACTORS LICENSE**

- a. Not Required.

**3. PERFORMANCE AND PAYMENT BONDS**

- a. Not Required.

**4. CERTIFIED PAYROLLS**

- a.

**5. SECTION 3 DOCUMENTS**

- a.

**6. DBE DOCUMENTS**

- a. Not Required.

Very truly yours,

Hemphill Construction Company Inc.

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Brandon Brown



P.O. Drawer 879  
Florence, MS 39073-0879

Phone: 601-932-2060  
Fax: 601-932-2550

Municipal & Public Works Construction

Heavy & Highway Construction

**STP-0055-02(208) LPA**

**Project No. 105278-701000, Madison County**

**Subcontract No: H23121-A101**

This Subcontract made this agreement date of 02/15/2024, is by and between **Hemphill Construction Company Inc. ("Contractor")**, with offices at **1858 Highway 49 South, Florence, MS 39073** (mailing address, PO Drawer 879, Florence, MS 39073), and **Site Support Group ("Subcontractor")** with offices at PO Box 3011, Ridgeland, MS 39158 (mailing address, the same).

**CONTRACTOR AND SUBCONTRACTOR PROMISE AND AGREE AS FOLLOWS:**

Subcontractor shall furnish all materials, labor, supervision, machinery, equipment, facilities, tools, and supplies necessary to perform all work set forth below in the construction of:


Reunion Phase2,STP-005-02(208)LPA105278-701000,Madison Co,MS ("Project") located in , ("Location") for **Madison County Board of Supervisors**, the Owner ("Owner"), in accordance with this Subcontract and the contract between the Owner and Contractor dated **Monday, October 16, 2023**, including all plans, drawings, forms, general, supplemental and/or special conditions, specifications, and all addenda, modifications and other documents forming or made part of said Contract, all of which Subcontractor acknowledges it has reviewed to its satisfaction.

The Contract is hereby incorporated by reference and made a part hereof, and Subcontractor is bound to Contractor by the same terms and conditions by which Contractor is bound to the Owner under the Contract. Contractor makes no representation or warranty, express or implied, regarding the adequacy or accuracy of the Contract. Subcontractor shall perform all duties and obligations that are related, directly or indirectly, to Subcontractor's work. Subcontractor will not do, or fail to do, any act, if such act or failure to act would constitute a breach of the Contract. This Subcontract is made conditional upon its approval, and approval of Subcontractor, by the Owner, if such approval is required under the Contract.

**1. SCOPE OF WORK:**

PAY ITEM NUMBER	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
007400-	Mobilization Erosion   Grassing	1.00	EA	3,000.00	\$3,000.00
213060-	Superphosphate	14.00	TON	1,285.00	\$17,990.00
216060-	Solid Sodding	670.00	SY	5.95	\$3,986.50
225060-	Permanent Grassing	27.00	AC	1,300.00	\$35,100.00
225160-	Agricultural Limestone	14.00	TON	175.00	\$2,450.00
225260-	Mulch, Vegetative Mulch	54.00	TON	400.00	\$21,600.00

H23121-A101

Contractor Initial: 

Subcontractor Initial: CC  
Page 1 of 18



PAY ITEM NUMBER	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	TOTAL AMOUNT
226060-	Temporary Grassing	27.00	AC	375.00	\$10,125.00
234060-	Silt Fence (Wirebacked,5' posts,10' spacing)	16,950.00	LF	2.85	\$48,307.50
245060-	Silt Dike	310.00	LF	11.00	\$3,410.00
246060-	Sand Bags	22.00	EA	30.00	\$ 660.00
246160-	Rock Bags	22.00	EA	35.00	\$ 770.00
224060-	Soil Reinforcing Mat	500.00	SY	3.75	\$1,875.00
217060-	Ditch Liner	1,250.00	SY	2.00	\$2,500.00

**TOTAL CONTRACT AMOUNT: \$ 151,774.00**

## 2. SPECIAL PROVISIONS:

Subcontractor shall perform the following work and all related and/or incidental work necessary to complete its Work promptly and to the satisfaction of Contractor and Owner.

Upon request from the Subcontractor, a sharefile location will be provided with copies of the plans and specifications. It is the subcontractor's responsibility to provide his plans in paper form.

Subcontractor shall submit in writing to Hemphill Construction assigning a Project Manager, Superintendent, EEO officers and Safety Officers with contact information.

Quantities are estimates only, and payment shall be made for the actual quantities of Work performed at the specified unit prices as accepted and paid for by Owner, unless the words "Lump Sum" appear below the Estimated Amount for an item of Work. All Subcontractors must invoice on Hemphill Construction Invoice Form (Attached) for payment to be made.

All applicable taxes, fees, and other costs and expenses of any nature whatsoever are included in the price(s). Any portion of the Work performed prior to the execution of this Subcontract shall be governed by and subject to the terms and conditions of this Subcontract.

Measurement of quantities and/or daily totals shall be reported to Hemphill Construction in writing at the end of each work week. The subcontractor shall be responsible to verify all quantities for full payment with the project representative.

### SUBCONTRACTOR SPECIAL PROVISION (If none, so state)

Subcontractor will adhere to Hemphill Construction Subcontractor Field Orientation Policy before they begin work. Hemphill Construction Safety Department will need to be contacted for the meeting:

Dwayne Toombs  
Safety Director

H23121-A101

Contractor Initial: 

Subcontractor Initial: CC

Page 2 of 18



Hemphill Construction Company, Inc.  
 P.O. Drawer 879  
 1858 Highway 49 South  
 Florence, MS 39073-0879  
 Office: 601-326-9181  
 Fax: 601-420-9300  
 Mobile: 601-750-3172  
 Email: [dtoombs@hemphillconstruction.com](mailto:dtoombs@hemphillconstruction.com)  
 Web: [www.hemphillconstruction.com](http://www.hemphillconstruction.com)


### 3. INVESTIGATION OF PROJECT:

Subcontractor has fully acquainted itself with and shall be solely responsible for all conditions affecting the Work, the Project site and surrounding conditions, as well as all laws, ordinances, regulations, and governmental requirements applicable to the Work, and the availability of all materials, supplies, and utilities necessary to perform the Work. Subcontractor assumes all risk and expense of any variances between actual conditions and any conditions represented in the Contract or this Subcontract, including but not limited to subsurface conditions, prior work performed by other parties, and the proper removal and disposal of waste and contaminants encountered on the Project. Subcontractor shall immediately notify Contractor in writing of any hazardous material or condition encountered on the Project site, or the release by Subcontractor of any contaminant or substance, the reporting of which is required under any law or regulation.

### 4. EXECUTION AND PROGRESS OF THE WORK:

Subcontractor shall commence Work no less than five (5) days after receipt of notice from Contractor and shall complete its Work in accordance with Contractor's schedule but not later than **Friday, October 31, 2025**. Time is of the essence of this Subcontract. Subcontractor shall make all necessary arrangements and coordinate its Work with the Contractor, other subcontractors and the Owner's forces so as not to delay or impair the progress of the Work or the work of others on the Project.

Subcontractor shall utilize and maintain whatever lights, barriers, supports, barricades, warning and other safety devices necessary to protect the Work and prevent personal injury or property damage. Subcontractor shall keep the Work area clean, neat and orderly, to the satisfaction of Contractor. Subcontractor's representative on the Project shall at all times have the authority to act in all respects on behalf of Subcontractor. Contractor shall have the sole authority to determine the acceptability or unacceptability of the Work, to reject unacceptable Work, and any decision by Contractor as to any aspect of the Work shall be final. Subcontractor shall not allow any labor dispute, or any claim or dispute in connection with this Subcontract, to in any way delay, interfere with, impair, disrupt, or hinder the Work. Contractor may at any time request Subcontractor to provide adequate assurances that it possesses the capability to complete performance of this Subcontract, and the failure of Subcontractor to supply such assurances to Contractor's satisfaction

H23121-A101  
 Contractor Initial: 

Subcontractor Initial: CC  
 Page 3 of 18

shall constitute a material breach of this Subcontract, entitling Contractor to terminate this Subcontract.

Subcontractor shall provide a competent representative on the Project at all times who shall have absolute authority to act in all respects on behalf of Subcontractor.

## 5. PAYMENT:

**Contractor shall pay Subcontractor monthly progress payments within 10 days after receipt of payment from the Owner for Subcontractor's Work. In any event, Contractor shall not be required to pay Subcontractor unless and until payment for the Subcontractor's Work is actually received by Contractor from Owner. Subcontractor per Contractor's request shall submit invoices and cancelled checks with each monthly invoice demonstrating that its subcontractors and suppliers have been fully paid to the extent of payment received.**

Payment shall be made only in accordance with this Subcontract and Contractor shall withhold **0.00%, representing retainage**, from all payments Contractor receives from Owner for Subcontractor's Work until the completion of the Project. Payment shall not operate as an acceptance of the Work performed, or materials furnished, or any part thereof.

Contractor reserves the right to withhold payment from Subcontractor under this or any other Subcontract between the Parties to satisfy any claims which Contractor has against Subcontractor and/or which have been asserted against Contractor's bonds or against the Owner and/or Owner's property, and to issue joint checks, payable to Subcontractor and any potential bond or lien claimant or pay any such claimant directly for labor, equipment, or materials supplied pursuant to this Subcontract.

Contractor must have received Subcontractor's pay request for all Work completed during the preceding pay period on the form attached hereto no later than the **25th** day of the month in order for Contractor to submit Subcontractor's pay request in a timely manner.

**All invoices must be addressed to the following individual only either by email, regular mail, fax, or express mail to Samantha Brown, PO Drawer 879, Florence, MS 39073, or Sub@hemphillconstruction.com. Failure to follow these instructions will delay payment of invoice.**

Any and all funds paid to Subcontractor on account of the Work shall be held in trust: (i) for the payment of labor and materials furnished in the performance of the Work; and (ii) for the payment of any and all liabilities of Subcontractor to Contractor. Neither Subcontractor, nor any person claiming under or through Subcontractor, shall have any legal or equitable interest or ownership rights of any nature in funds held in trust unless and until the purposes and intent of such trust are fully discharged. The holding of funds in trust shall be for the sole benefit and protection of Contractor, and no third party shall have any rights in such funds as beneficiary or otherwise.

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 4 of 18

## FINAL PAYMENT

Prior to the final payment, Subcontractor shall (1) give Contractor satisfactory evidence that the premises are free and clear of all liens or other claims, and (2) execute a General Release on a form provided by Contractor, holding the Owner and Contractor harmless from all claims arising out of or in connection with the Subcontract. Final payment constituting the entire balance of the Subcontract sum will be paid by the Contractor, as shown below, to the Subcontractor when (a) the Work has been satisfactorily completed and (b) the Work has been accepted by the Owner:

10 business days after receipt of final payment from the Owner.

## 6. INSURANCE:

All insurance policies must be written with carriers that are rated at least (A-) with a financial rating of (VII) by A.M. Best Company. All policies must be issued by insurance carriers that are admitted to do business in the state of Mississippi by the insurance department. All policies must be written on an "Occurrence" Basis.

Subcontractor shall provide and maintain insurance in the types and amounts required by the Contract or as provided below, whichever is greater, and naming Contractor as an additional insured. All policies which name Contractor as an additional insured shall apply as primary insurance and any policy maintained by Contractor shall be excess and non-contributing.

Subcontractor shall provide a Certificate of Insurance from its insurance agent, evidencing that insurance as required by this Subcontract has been obtained and is in full force and effect. Such certificate shall be submitted before Subcontractor commences Work. Subcontractor's failure to provide such certificate or such insurance in accordance with this Subcontract shall not diminish Subcontractor's obligation to provide insurance in accordance with the requirements of this Subcontract. Any variation between the certificate of insurance and the insurance requirements of the Subcontract shall be null and void.

Waiver of Subrogation must be provided for all of the following insurance requirements:

### General Liability Insurance Requirements –

The General Liability insurance policy will carry the following limits of liability:

\$1,000,000.00 Each Occurrence Limit, \$2,000,000.00 General Policy Aggregate Limit, XC & U coverage must not be excluded from the policy and shown as covered on the Certificate of Insurance. Policy must not carry a "Designated Operations Endorsement". If a "Designated Operations Endorsement" is included on the policy then it must be shown on the Certificate of Insurance as to what operations are covered. Policy must carry a "Per Project Aggregate Limit Provision" which must be shown on the Certificate of Insurance. "Loading" and "Unloading" operations must be covered by the policy and indicated on the Certificate of Insurance.

### Automobile Liability Insurance Requirements –

The automobile liability policy will carry the following limits of liability:

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 5 of 18

\$1,000,000.00 combined Single Limit of Liability. Coverage must be provided on an “any Auto Basis” including “Hired Autos” and “None-owned Autos”. These coverage items must be indicated on the Certificate of Insurance. Policy must be written on an “Occurrence Basis”

**Workers’ Compensation Liability Insurance Requirements –**

The workers’ compensation liability policy will carry the following limits of liability:  
\$1,000,000.00 Employer’s Liability Limit – Each Accident, \$1,000,000.00 Employer’s Liability Limit – Each Employee, \$1,000,000.00 Employer’s Liability Limit – Disease Limit  
**Coverage must be applicable for the state that the work is being performed in.**

**Excess Umbrella Liability Insurance Requirements –**

The excess liability policy will carry the following limits of liability:  
\$1,000,000.00 per each Occurrence, \$1,000,000.00 General Policy Aggregate Limit  
Excess Umbrella will cover over the General Liability, Automobile Liability and Workers’ Compensation Liability on a “Follow Form” basis.


**7. INDEMNITY:**

Subcontractor shall defend, indemnify and hold Contractor, its officers, employees, agents, insurers, sureties, and parent and affiliated corporations, harmless from any and all losses, consequential damages, expenses (including but not limited to attorneys’, consultants’ and experts’ fees), claims, suits, liabilities, fines, penalties, and remedial or clean-up costs arising out of or in any way related to (i) the performance of the Work, (ii) any breach of this Subcontract, or (iii) any act or omission by Subcontractor, its invitees, or any person performing Work directly or indirectly on behalf of Subcontractor, regardless of whether Contractor is wholly or partially at fault. Subcontractor’s indemnity and defense obligations shall apply to any claim against Contractor by any employee of Subcontractor; and Subcontractor shall not assert as defense in any suit by Contractor to enforce Subcontractor’s obligations under this Article 7 any immunity or other defense provided under any worker’s compensation or other laws. Subcontractor’s obligations under this Article 7 shall not be limited by any other provision of this Subcontract or by any law. Any damages recoverable by Contractor from Subcontractor shall bear interest at the annual rate of 18%, or the highest rate allowed by law.

**8. CHANGES; EXTRA WORK:**

Changes in the Work may be made only upon written order by Contractor’s authorized representative to Subcontractor, and Subcontractor shall not be entitled to a change in the Subcontract price or time for any changed or extra Work performed prior to receipt of such order. Any changes in the Subcontract price or time shall be agreed upon in writing by the parties; and if such agreement cannot be reached, Subcontractor shall proceed as directed by Contractor and may submit a claim in accordance with paragraph 16 for any increased costs so incurred.

In no event shall Contractor be liable to Subcontractor for an amount in excess of the amount paid to Contractor by Owner on behalf of Subcontractor for changed or extra work which is required to be performed by Owner. Subcontractor shall follow all orders by Contractor, without additional H23121-A101

Contractor Initial: 

Subcontractor Initial: CC  
Page 6 of 18

compensation, when Contractor has been directed by the Owner to follow similar orders, without additional compensation.

**9. DELAY:**

Subcontractor agrees to make all necessary arrangements and coordinate its Work with any other contractor or subcontractors on the Project so as not to delay the progress of its Work or theirs. If Subcontractor causes delay in any way resulting in damage to the Contractor or damage for which the Contractor is liable, Contractor may withhold payment in an amount sufficient to hold Contractor harmless from and against such delay.

No extension of time shall be allowed unless Subcontractor submits a written request to Contractor within 48 hours of the commencement of the asserted basis for such request and then only if and to the extent approved by Contractor and Owner in writing, regardless of the asserted basis for such request, and regardless of whether Owner or Contractor is at fault. No damages, additional compensation, or other remedy, including an extension of time, shall be granted to Subcontractor for any delay, interference, impairment, disruption, or hindrance that Subcontractor may encounter in performing the Work, regardless of the cause, unless and until payment for such delays or an extension of time is actually obtained by the Contractor from the Owner on behalf of the Subcontractor.

**10. DISADVANTAGED BUSINESS ENTERPRISE:**

NOT APPLICABLE


**11. WARRANTY:**

Subcontractor shall provide all warranties with regard to the Work as required in the Contract; however, in no event shall such warranties extend for less than one year from the final acceptance date of the Project. Subcontractor warrants and guarantees its Work and shall replace or repair to Owner's and Contractor's satisfaction any material or workmanship in the Work deemed defective by Owner or Contractor which may arise within such warranty period.

**12. COMPLIANCE WITH LAW:**

Subcontractor, at its own expense, shall comply with all applicable local, state and federal laws, rules, regulations and ordinances, as amended, including but not limited to those governing: wage and hour, employment, DBE, drug-free workplace, safety, hazard communication, material safety data, health, and matters affecting the environment.

Subcontractor shall not discriminate against any employee or applicant on the basis of race, color, religion, sex, national origin, age, disability, or veteran status; and Subcontractor shall comply with the Civil Rights Act of 1964, Executive Order 11246, 41 CFR Part 60 and all other statutes and laws prohibiting any such discrimination. Subcontractor shall cause such legal and regulatory

H23121-A101  
Contractor Initial: 

Subcontractor Initial: CC  
Page 7 of 18

requirements, to the extent required under any law, regulation or the Contract, to be included in any lower-tier subcontract or purchase order, including without limitation Required Contract Provisions Under Federal-Aid Construction Contracts. Subcontractor shall comply with all federal and state antitrust laws, and further represents and warrants that no employee, officer, director or agent of Subcontractor has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the Work.

Subcontractor agrees to utilize and comply with all requirements of the Department of Homeland Security's electronic work authorization verification program known as E-verify. Subcontractor shall implement and utilize the E-verify program in accordance with the provisions of the Mississippi Employment Protection Action. Subcontractor shall identify and hold contractor and Owner harmless to the fullest extent permitted by law for Subcontractor's failure to ensure that all persons employed by Subcontractor under this subcontract or on this project or for whom Subcontractor is legally responsible have the necessary and appropriate work authorization and work documentation.

Subcontractor shall obtain and pay for all permits, certifications, inspections and licenses required by any such laws, rules, regulations and/or ordinances.

### **13. SUSPENSION OR TERMINATION:**

This Subcontract will terminate, or the Work will be suspended, to the extent that: (i) the Owner suspends the Work, in whole or in part, or (ii) Contractor gives written notice to Subcontractor that this Subcontract is terminated or the Work is suspended, in whole or in part. In any of such events, Subcontractor shall immediately suspend or terminate Work as appropriate. Contractor's only liability to Subcontractor in the event of termination or suspension shall be to pay Subcontractor for Work performed and/or materials furnished by it to the extent paid for by the Owner and subject to back charges for costs incurred by Contractor.

### **14. DEFAULT:**

If, in the opinion of Contractor, Subcontractor (i) breaches any term of this Subcontract, (ii) fails to provide sufficient skilled labor or materials of proper quality, (iii) fails to repair defective Work, (iv) fails to prosecute the Work promptly and diligently to promote the progress of the Project, (v) becomes insolvent or experiences financial difficulty so that proper performance of the Work is jeopardized, or (vi) becomes disabled from complying with any term of this Subcontract by a petition in Bankruptcy or by appointment of a receiver (each of which is an "event of default"), then Contractor may, at its sole option: (a) declare Subcontractor in default and terminate this Subcontract, effective 48 hours after written notice to Subcontractor; (b) provide any or all of the labor, equipment, and materials necessary to complete the Work, and deduct the cost thereof from any money due Subcontractor, and/or (c) take possession of any materials and equipment of Subcontractor in order to finish the Work. Subcontractor shall be liable for any damages or losses incurred by Contractor resulting from an event of default, and Contractor shall have a security interest in and lien upon all materials and equipment of Subcontractor to secure such obligation. If

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: CC



Subcontractor owes Contractor money or has any liability to Contractor for any reason, whether or not arising under this Subcontract, Contractor may offset such obligation or debt against any monies which Contractor, or any of its corporate affiliates, owes Subcontractor under this or any other contract, subcontract, purchase order or agreement.

## **15. CLAIMS AND DISPUTES:**

Subcontractor may submit a claim for extra work or otherwise for additional compensation only as permitted by the Contract and this Subcontract. Contractor's sole obligation in connection with such claim shall be to submit same to the Owner and to pay to Subcontractor any monies paid by Owner on behalf of Subcontractor, less Contractor's mark-up and other costs incurred in connection with such claims. Subcontractor shall have sole responsibility for submitting such a claim within the shorter of (a) the time limitations and other requirements as set forth in the Contract or (b) within ten days of the initial occurrence of any event giving rise to such claim. If permitted by law and the Contract, Subcontractor may, at its sole expense, pursue its claim against the Owner in the name of Contractor; but prior thereto, Subcontractor shall enter into a separate written agreement satisfactory to Contractor to indemnify Contractor from any associated costs, expenses, or other losses. Subcontractor shall have no claim against Contractor for which Owner is not liable or otherwise has not made payment to Contractor; and in no event, shall Contractor have any liability to Subcontractor in excess of any actual recovery.

The Subcontractor shall proceed diligently with performance of this Subcontract, pending final resolution of its claim and shall comply with any decision of the Contractor.

## **16. PAYMENT AND PERFORMANCE BONDS:**

Separate payment and performance bond, each in the penal amount of this Subcontract, on forms and with sureties satisfactory to the Contractor **shall not** be provided by the Subcontractor.

## **17. SUB-SUBCONTRACTS:**

Subcontractor shall not assign or sublet any portion of this Subcontract or its proceeds without the prior written consent of Contractor and this Subcontract shall be made a part of any sub-subcontract or other agreement covering any portion of the Work. Subcontractor shall, before commencing the Work and at any time requested by Contractor, furnish Contractor a written list of the names of all subcontractors, suppliers and any other entities that may furnish labor or materials in the prosecution of the Work. In any sub-subcontract or contract to procure materials or equipment, Subcontractor shall include a provision allowing for termination of such sub-subcontractors or suppliers at Subcontractor's convenience without liability to Contractor or Owner, which Subcontractor shall promptly exercise if requested by Contractor.

## **18. SAFETY:**

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: CC

Page 9 of 18



Subcontractor shall comply with all safety policies and rules of Contractor and Owner, and shall take all actions and precautions necessary to ensure the safety of its employees, the general public, and all other persons on, around, or affected by the Work. Subcontractor's failure to fulfill its obligations regarding jobsite safety entitles Contractor to terminate Subcontractor for default. Subcontractor will adhere to the Contractor's Safe Practice requirements.

## **19. ENFORCEMENT:**

Failure or delay by Contractor to require performance of any provision of this Subcontract shall not be deemed a waiver of its right to enforce such provision, or a waiver of any other right. If any provision of this Subcontract is found unenforceable by any court or tribunal, Contractor and Subcontractor agree that such provision shall be modified to the minimum extent necessary to render it enforceable, and that the remainder of this Subcontract shall not be otherwise affected. The mutual agreement of the parties hereto is comprised of each and every provision hereof, and no provisions shall individually be held unenforceable for lack of mutuality. Subcontractor shall be bound by any labor agreement executed by Contractor or Owner to the extent required by such agreement.

This Subcontract constitutes the entire agreement between the parties, and may not be amended except by written agreement executed by the parties. If there is any conflict between the terms and conditions of this Subcontract and the terms and conditions of the Contract, the terms and conditions imposing a greater burden on Subcontractor shall prevail. This Subcontract supersedes any and all prior understandings, conversations, and proposals

## **20. CONFLICT:**

If there is any conflict between the terms and conditions of this Subcontract and the terms and conditions of the Contract, the terms and conditions imposing a greater burden on Subcontractor shall prevail.

## **21. NONCOLLUSION:**

Subcontractor warrants and guarantees that it has complied with all federal and state anti-trust laws and that neither Subcontractor nor any employee, officer, agent or director of Subcontractor has directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with its proposal for this Work.

## **22. WAIVER OF JURISDICTION:**

The Subcontractor consents to the personal jurisdiction and venue of the Circuit Court of Rankin County, Mississippi and agrees that the Circuit Court of Rankin County, Mississippi shall be the sole and exclusive forum for resolution of all disputes between the Subcontractor and the Contractor arising out of or in any way related to this Subcontract or the breach thereof and that any suit filed



by Subcontractor in any other forum shall be dismissed or transferred to the Circuit Court of Rankin County, Mississippi.

**23. ARBITRATION:**

At Contractor's sole election, any dispute between Contractor and Subcontractor which does not involve the Owner shall be arbitrated in accordance with (but not administered by) the American Arbitration Association Construction Industry Arbitration Rules by one (1) arbitrator selected by the parties. The locale for any such arbitration shall be Jackson, Mississippi and the award rendered by the arbitrator may be enforced in any court having jurisdiction.

**24. ATTORNEYS' FEES:**

The prevailing party in any dispute between the parties arising out of or related to this Subcontract or the breach thereof shall be entitled to recover its reasonable attorneys' fees and expenses, including expert witness fees and expenses, incurred in pursuing or defending any claim.

**25. INDEPENDENT CONTRACTOR:**

Subcontractor agrees that it is, or prior to the start of Work will become, an Independent Contractor and an employing unit subject to all applicable Unemployment Compensation Statutes so as to relieve the Contractor of any responsibility or liability for treating Subcontractor's employees as employees of the Contractor for the purpose of keeping records, making reports and payment of unemployment compensation taxes or contributions. Subcontractor agrees to indemnify and hold Contractor harmless and reimburse it for any expenses or liability incurred under statutes in connection with Subcontractor's employees, including amounts paid to Subcontractor's employees, where such benefit payments are charged to Contractor under a merit plan or through its individual reserve account pursuant to any State Unemployment Compensation statute.

**26. SECTION 3 CLAUSE:**

NOT APPLICABLE

**27. CERTIFIED PAYROLL CLAUSE:**

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

- ( 1 ) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- ( 2 ) The classification is utilized in the area by the construction industry; and
- ( 3 ) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 12 of 18

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

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

(2) *Withholding*. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records*. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 13 of 18

under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

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

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

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

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

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

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

H23121-A101



Contractor Initial: \_\_\_\_\_

Subcontractor Initial: CC

Page 14 of 18

(4) *Apprentices and trainees* —(i) *Apprentices*. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: CC

Page 15 of 18



the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any 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 §5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 16 of 18

in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

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

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

This Subcontract is effective upon the later of the two dates shown below.

H23121-A101



Contractor Initial: \_\_\_\_\_

CC

Subcontractor Initial: \_\_\_\_\_

Page 17 of 18




**Hemphill Construction Company Inc.**

By: 

Title: Vice President

Date: 2-15-24


**Site Support Group**

By: 

Title: Member

Date: 2-15-2024

H23121-A101

Contractor Initial: 

Subcontractor Initial: CC

P.O. Drawer 879  
Florence, MS 39073-0879



Phone: 601-932-2060  
Fax: 601-932-2550

Municipal & Public Works Construction

Heavy & Highway Construction

## NOTICE TO PROCEED

**TO: Site Support Group**

**DATE: 02/15/2024**

**PROJECT: Madison County - Board of Supervisors  
Reunion Ph.2,STP-0055-02(208)LPA105278-701000, Madison Co,MS  
,  
Subcontract No. H23121-A101**

You are hereby notified to commence work in accordance with the Subcontract Agreement dated 02/15/2024 on or before **02/19/2024**, as directed by the Contractor, and you are to complete the work on or before **10/31/2025**.

Hemphill Construction Company Inc.

Brandon Brown

### **ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by:

Site Support Group

Date: 2-15-2024

By:   
Signature

Title: \_\_\_\_\_ Member \_\_\_\_\_



Municipal & Public Works Construction

Heavy & Highway Construction

## Hemphill Construction, Inc. Safe Practices

The following project work rules will be adhered to and include Hemphill personnel, subcontractors/vendors, and visitors entering the site. Each of the requirements noted are **mandatory** for the project, and may only be modified with the approval of the Hemphill Director of Safety.

The HCC Safe Practices (SP) is intended to promote awareness of safety on all HCC project sites. This document is provided for informational purposes only, and is not intended to encompass all potential safety concerns inherent in the prosecution of the work.

The requirements of this document shall be the minimum requirements utilized by HCC employees, subcontractors, Vendors or visitors.

### 1. HOUSEKEEPING, SANITATION and GENERAL WORK RULES

- A. Violation of any SP or site rule/regulation will be cause for disciplinary action. Subcontractors, vendors and visitors will be subject to removal from the project. See section 17 of this document for Disciplinary/fine structure.
- B. If you have any questions about the safety aspects of your job or your responsibilities, contact your supervisor. Remember, only perform tasks in which you have been trained and authorized.
- C. Daily housekeeping is the responsibility of each employee on site. Work areas are to be kept clean and uncluttered. Debris disposal is to occur at the end of each day. Protruding nails are to be pulled immediately.
- D. Drugs and alcohol are prohibited on the project as per HCC's Drug-free Workplace Policy. Weapons and contraband are prohibited on the jobsite and all project parking areas.
- E. Report all unsafe acts and conditions to your supervisor immediately. Horseplay, fighting, or running is prohibited while on the project site. All parties involved in such activities will be subject to disciplinary action up to and including removal from site.
- F. Blocking, blinding and locking out of equipment shall be supervised and performed per owner of the utilities or equipment. Approved Lockout-tagout / energy isolation procedures shall be utilized when controlling all energy sources. (Reference section 8 of this document)
- G. HCC Project Superintendents or Project Foremen shall be consulted before entry into confined spaces or potential confined spaces. Subcontractors shall supply a confined space entry program to HCC Safety for review prior to commencing any confined entry scopes of work.
- H. **Manual Lifting:** Observe a 50-lb. weight limit. If the object to be lifted weighs more than 50 lbs. or you do not feel that you are physically capable, get help or utilize lifting equipment to move the object. Special lifting precautions should be taken when lifting odd shaped or awkward shaped materials or equipment.
- I. Adequate access to potable drinking water must be provided to all personnel. Single-use cups must be provided and maintained in sanitary condition prior to use. A trash receptacle for cups shall be provided at all water locations. Use of common drinking cups is prohibited. Single use cups shall never be utilized for chemical transfer containers.

### 2. SAFETY MEETINGS, TRAINING and DOCUMENTATION

- A. Prior to the start of work on the project, each craftsperson, supervisor and on-site staff must successfully complete the required pre-mobilization safety orientation program. Upon satisfying these requirements each craftsmen must attend a project specific safety orientation to review those practices that will be required for the project. Upon completion each participant will provide a signed acknowledgement verifying their attendance.

H23121-A101

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Subcontractor Initial: CC

Page 1 of 10

- B. A current copy of the subcontractor's site specific/corporate safety plan will be maintained on site. This document shall be submitted to the HCC project superintendent prior to the start of work and maintained on site.
- C. The subcontractor shall ensure their project supervision is knowledgeable and competent in all safety aspects of their work. This competent person is to be on site at all times while their work is in progress. Identification of competent persons shall formally be submitted to the HCC office prior to commencing work.
- D. Site-specific Hazcom manuals will be maintained in the field. Subcontractors shall provide and be responsible for maintaining their own manuals in the field. These Hazcom manuals will be available to all site employees for review. All chemical containers shall be labeled to identify contents in accordance with all OSHA requirements.
- E. Each subcontractor will conduct weekly toolbox safety meetings or attend the HCC weekly safety meeting. Copies of these meetings and attendance sheets shall be made available to HCC when needed. Training shall be bilingual when required. Periodically, general site safety meetings will be conducted to inform site personnel of upcoming work and the potential associated hazards.

### 3. PERSONAL PROTECTIVE EQUIPMENT (PPE)

- A. **Safety Glasses:** Approved Z.87 safety glasses and/or prescription safety glasses with rigid side shields will be worn when needed. This starts at the point at which you enter the site. Face shields are to be worn in addition to safety glasses when grinding, chipping, or similar activities as outlined in OSHA 1926.102. Site visitors and periodic inspection personnel wearing standard prescription glasses must utilize rigid side shields or "over-the-glass" type eye protection.
- B. **Hard Hats:** Hardhats meeting the requirements of OSHA 1926.100 shall be utilized and unaltered. Hardhats are required for all site personnel and must be worn at all times. Hardhats will be worn correctly with webbing and bills facing forward. See exceptions for those operations that require welding hoods. Hardhats shall be inspected daily and replaced when defects are apparent. **All hard hats will be required to identify the individuals name and company of employment.**
- C. **Proper Clothing:** Each employee must arrive at the project site ready to work and clothed appropriately. All clothing shall be clean and free of rips or tears. Tank tops, sleeveless shirts, shorts, and baggy clothing are prohibited. Those wearing such clothing will be removed from site. Shirts must have a minimum of a 4" sleeve. Reflective vests must be worn at all times while on site unless directed otherwise.
- D. **Footwear: Safety-toe** construction-duty work boots that provide ankle support and puncture protection are required for all employees. Athletic/non-safety type shoes are prohibited and those employees wearing such will be removed from site. All site visitors must wear appropriate construction footwear. Those not having appropriate footwear will not be permitted into construction areas without approval from the project superintendent. When acceptable, those individuals will be escorted at all times while on site.
- E. **Work Gloves:** Gloves are required when manually handling materials. For proper glove selection, review the appropriate SDS or contact your supervisor. Leather work gloves are recommended while performing reinforcing related tasks. Cut resistant gloves should be used when handling sharp objects or using knives. As a minimum, a cut resistant glove must be worn on the non-cutting hand.
- F. **Respiratory Protection:** When cutting or grinding cementitious materials or cleaning in enclosed environments, masks equal to NIOSH N-95 should be worn for protection. All other areas or operations will be evaluated by project supervision. If respirators are required for employees to perform assigned work, additional training is required. See your supervisor and contact the Project Safety Coordinator. Subcontractors will be responsible for their own employees and shall provide HCC with their program elements and identifications of competent persons. Where conditions warrant, air sampling may be required to ensure the correct selection of respiratory protection.
- G. **Hearing Protection:** Use hearing protection in high-noise areas, and at times when use of elevated voice is required. Hearing protection is required when operating grinders, air tools, jackhammers, hammer drills, powder-actuated tools, cutoff saws, and similar tools. Subcontractors are responsible for their own employees and shall provide HCC with their program elements and identification of competent persons. Where conditions warrant, noise sampling may be required to ensure the correct use and selection of hearing protection. Hearing protection is to be worn in production areas as designated/marked by the client.

### 4. FALL PROTECTION

H23121-A101

Contractor Initial: \_\_\_\_\_

Subcontractor Initial: \_\_\_\_\_

CC

Page 2 of 10

- A. 100-percent fall protection (double lanyards or single lanyard with double legs) are required for all work six feet or greater in height where guardrail protection is not in place (see Scaffold, Ladder, and Stairway provisions). All PFAS connectors, including carabineers / snap hooks, shall meet ANSI Z 359.1-2007 standards.
- B. A safe means of access shall be maintained to structural activities. The use of aerial lifts as the sole means of access is prohibited. Climbing and sliding down columns is prohibited.
- C. Prior to starting work, each contract partner involved in elevated work must provide a written safety plan that includes a project/task-specific fall protection plan. This document shall be submitted to Haskell Safety for review.
- D. A guardrail system consisting of a top rail (39" – 45") and mid-rail will be constructed at all **unprotected sides, edges and floor openings where a recognized fall hazard to a lower level exists**. The guardrail system will be capable of supporting 250 lbs. The guardrail system will have a toe board installed for the protection of those below when the system is greater than six (6) feet above a lower level.
- E. Wire rope guardrail and perimeter slab edge systems will consist of a top rail, mid-rail and be flagged at not more than 6-foot intervals with high-visibility material. A minimum of three (3) U-bolt wire rope clips will be used and installed such that the "U" section is in contact with the dead end of the rope. Wire rope guardrail systems will be maintained to ensure the lowest point above the walking/working surface is no less than 34-inches and highest point no greater than 39-inches.
- F. Roof and leading edge work activities will utilize and maintain warning lines around all open sides not less than six (6) feet from the edge. All other work performed on roofs will require warning lines not less than fifteen (15) from the edge. No worker will be allowed in the area between the edge and the warning lines without a secured Personal Fall Arrest System. Roof monitoring programs will be prohibited unless approved by HCC's safety coordinator.

## 5. SCAFFOLDS and ELEVATED PLATFORMS

- A. All scaffolding shall be inspected, constructed, dismantled, and altered by a designated competent person. This inspection shall be performed daily and prior to the shift. All scaffold systems will be tagged for employee awareness. When the scaffold system is used by multiple trades a chain of custody/responsibility program must be utilized to ensure compliance.
- B. All scaffolds will be fully planked, braced, and guardrail systems installed (**six-feet and above**). Employees shall be tied-off when guardrails cannot be installed at heights of six feet or greater.
- C. Scaffolding is to be supported on a firm subgrade and sound mudsill material. Base plates are required for all fixed scaffolds.
- D. Provide toe-boards, screen systems, or similar to protect those working below elevated decks, structures and leading edges six feet or greater above a lower level.
- E. Mobile scaffolds will be utilized with locked wheels only. Moving the scaffold from elevated positions will not be permitted.
- F. Follow manufacturer recommendations when using **Perry** or **Baker** type scaffold systems. Their requirements may be more stringent than OSHA or HCC's SP.
- G. Ladder access will be provided for each scaffold.
- H. Scaffold system components, construction and use must be in accordance with manufacturer's requirements. Scaffold loading must not exceed manufacturer's capacity requirements.
- I. **100-percent fall protection** is required when working from scaffolds placed near roof or slab edges and the workers waist is above the top-rail. At all times, scaffolds near leading edges shall be secured to prevent displacement.

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 3 of 10

- J. All work performed from a scissor lift must be accomplished with feet firmly on the deck. All occupants in scissor lifts must maintain **100-percent fall protection** utilizing a personal fall arrest system (PFAS) connected to the manufacturer's anchorage point.
- K. Fall restraint devices are required while working from Aerial lifts / Articulating boom lifts. All occupants in aerial/articulating boom lifts must wear a full-body harness with connector (lanyard, SRL, etc.) Fall restraint devices shall be secured to manufacturer's anchorage points only.
- L. Manufacturer's operation and safety manuals must be present and/or immediately available on Aerial / Articulating boom lifts and scissor lifts for use by the authorized and trained operator. Lifts of all types will be used in accordance with Manufacturer's instructions and limitations.

## 6. LADDERS and STAIRWAYS

- A. Ladders must be inspected for defects prior to each use. Ladders with broken/damaged components or missing/illegible manufacturer's instructional labels must be removed from service immediately. **Metal ladders are prohibited.**
- B. Work will be performed while facing the ladder. Three-point contact must be maintained at all times while ascending and descending ladders. Never carry tools or materials in your hand, use a rope and/or approved bucket to raise tools and materials.
- C. Extension ladders must extend three-feet above the supporting object when accessing elevated work areas and be tied off to prevent displacement. When extension ladders cannot be tied-off, another employee will be required to hold the base of the ladder. Extension ladders will be used at a 4 to 1 angle / 75-degrees.
- D. Job made ladders will be constructed with stress-grade lumber. Cleats and blocking (filler blocks) will consist of 2x4 materials. Cleats will be uniformly spaced and parallel throughout the working height. Job made ladders will be used at a 4 to 1 angle /75-degrees. Job made ladders with spliced side rails shall be used at 8 to 1 angle.
- E. Work from the top two steps of stepladders is prohibited. Stepladders are designed to be worked from, and not to gain access to elevated work areas. When using stepladders, ladders must be fully opened with the spreader bar in a locked position.
- F. **100-percent fall protection** is required when working from ladders placed near perimeters, roof or slab edges when your waist is above the top-rail. At all times, ladders near leading edges shall be secured to prevent displacement.
- G. Prior to using stairways all tread pans must be filled, landings complete, and handrails in place. In the absence of these requirements, stairways are to be barricaded.
- H. A change of elevation greater than 19 inches requires use of stair, ramp or ladder. Stairs with four (4) risers or more and/or rising 30 inches or more require use of a handrail system capable of withstanding a force of 200 pounds. Handrail systems must be installed on each unprotected side or edge.
- I. Extension ladders shall not be used as two separate ladders unless permitted by the ladder manufacturer.

## 7. TRENCHING and EXCAVATING

- A. All excavations and trenches must be inspected daily by a designated competent person. This documented inspection will be performed daily prior to the shift and following major weather events. The creating-owner of the excavation shall maintain documentation indicating such inspections for review by HCC. Each subcontractor whose employees must enter excavations shall supply a competent person on site at all times.
- B. All soils shall be considered class "C" unless otherwise designated by a competent person or a manual test (i.e.) Pentrometer) recognized by HCC.
- C. Shoring and sloping methods must be employed for all excavations of **4-feet of depth or greater** and be in accordance with all manufacturer or regulatory requirements. Trench boxes and similar shoring methods shall be

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 4 of 10

used per the manufacturers' tabulated data or professional engineer's directions. Employees shall not leave protection.

- D. Provide ramp, stair, or ladder systems to allow safe egress from all trench excavations **4-feet or greater** in depth. Locate egress systems such that the travel distance from any point in the excavation is no greater than 25-feet.
- E. A perimeter warning system will be used for all excavations not clearly visible, or that are located near roadways and mobile equipment travel ways.
- F. Employees will not be permitted to work directly beneath suspended loads or excavation equipment.
- G. All trenches and excavations twenty-feet or greater in depth shall have sloping and shoring methods designed by a registered professional engineer (PE) and be reviewed by HCC, prior to entry.
- H. Prior to performing any trenching or excavation activities a thorough coordination and investigation shall be conducted to identify buried utilities / energy sources. The use of utility providers and locate agencies must take place before performing work. An excavation permit program is recommended for sites where a high potential for buried utilities exists.

### 8. PROCESS / MECHANICAL & ELECTRICAL ISOLATION (Electric, Water, Gas, Air and Similar)

- A. Utilize Lock-out/Tag-out (LOTO) and verification procedures to render equipment inoperable or circuits de-energized during the construction process. Provide tags indicating ownership of the lockout device and the equipment/circuit de-energized. **Energy isolation activities will require an approved permit prior to starting work and all work must be performed by qualified / authorized personnel only.**
- B. Only trained and authorized personnel will be permitted to perform work under lockout/tagout conditions. The authorized employees are required to perform the lockout in accordance with facility and regulatory requirements (29CFR1910.147). All employees, upon observing a machine or a piece of equipment which is locked out for servicing or maintenance shall not attempt to start, energize or use that machine or equipment, or remove personal lockout devices without approval. **Prior to energizing any equipment all machine guarding and safety devices must be in place.**
- C. Maintain 10 feet from power lines up to 50,000 volts. Add another 1 foot per 10,000 volts.
- D. **Verification of Energy Isolation** - After all energy-isolating devices are in the safe and locked position and the equipment is de-energized, conduct a "Clear & Try Process" where applicable to confirm validity of the isolation and lockout. Ensure all switches are returned to the "off" position where applicable.

### 9. ELECTRICAL

- A. Flexible cords (extension), shall be inspected daily prior to use and protected from damage. Flexible cords permitted for use must be No. 12 gauge or larger. Ensure all cords traversing areas subject to vehicular traffic and routed across aisle ways are protected from damage. Cords and leads run through doors and holes must be protected. Cords exhibiting damage, missing ground pins, broken strain relief, or exposed wires are to be taken out of service by removing them from the site immediately or tagging them "Do Not Use".
- B. GFCI protection shall be utilized when power is supplied from permanent building wiring. Protection shall be supplied via a GFCI circuit breaker, receptacle or pigtail. Test and reset GFCI's before each use.
- C. Portable/vehicle mounted generators must be equipped with ground-fault receptacles (GFCI). Those not equipped with GFCI receptacles must utilize GFCI plug assemblies (pigtailed) for power supply to all tools, equipment or similar. Generators must be grounded in accordance with manufacturer's recommendations.
- D. Temporary power stations will be inspected for defects and/or damage. Each breaker will be labeled to identify the device/component being controlled. All receptacles/devices will be kept in good condition. All open

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

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breaker or enclosure knockout spaces must be covered with manufacturer's blank plate. All defective components will be corrected immediately. Manufacturer supplied means must be used to lock panels when necessary.

- E. Only qualified/authorized electricians will be permitted to work on energized electrical panels, rooms, and devices. All energized electrical panels will be maintained with dead front covers in place for the protection of personnel. Control access to electrical rooms containing energized panels.
- F. Utilize Lock-out/Tag-out (LOTO) procedures to render equipment inoperable or circuits de-energized during the construction. (Reference section 8 of this document)
- G. Adequate lighting will be maintained at all times including bulb guards, lamps, wiring, suspension means, and grounding.

## 10. FIRE PROTECTION

- A. When cutting or burning, ensure an approved fire extinguisher is in close proximity. Know the condition of and where the nearest fire extinguisher is located. If the extinguisher is discharged, notify your supervisor for immediate replacement.
- B. Gasoline and other liquid fuels must be kept in Department of Transportation (**DOT**) approved metal safety cans consisting of a flash arresting screen and spring closing lid/spout. Fuel cans will be stored in designated areas and labeled. Plastic fuel containers are not permitted.
- C. **Smoking will be permitted in designated areas only.** The HCC project superintendent will regulate smoking areas. When smoking, be aware of your surroundings and stay clear of combustible or flammable materials.
- D. Fire watches shall be provided for all hot work from elevated areas or for work where slag or sparks may fall through floor and wall penetrations. Fire watch personnel are required for thirty minutes after hot work is completed.
- E. Signage such as "Flammable Materials" and/or "No Smoking" will be provided at all storage locations of flammable and/or combustible fuels as warning to those in close proximity. This signage is required at all storage / conex locations where flammable materials or fuel powered equipment is stored. Adequate fire suppression equipment shall be provided at each location.
- F. Prior to any work performed within or near existing spaces containing volatile substances, fuels, dust, fumes or similar (Class I, Division I), coordination of activities and review of safe practices is required with HCC.
- G. All bulk fuel storage must have adequate fire protection and spill plans to withstand 110% of volume.

## 11. TOOLS and EQUIPMENT

- A. Hand tools are to be inspected daily prior to use. Damaged cords, guards, or similar components will require the tool to be removed from service immediately.
- B. Employees using powder-actuated tools must have current certification indicating training completion by the manufacturer of the device and follow all requirements related to the safety of those in close proximity.
- C. Air/pressure hoses, including concrete pump hoses, must be secured at all couplings by means of pin or clip to prevent whipping or pull-out. Manufacturer's safety precautions and devices must be utilized.
- D. Side/angle grinders shall be used with the guards in place.
- E. All equipment / machinery equipped with machine guarding devices must utilize these guards when the equipment is in operation.

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 6 of 10



- F. Only industrial capacity rated chain hoists and cable winches (come-a-long) are permitted. Hooks must have operable self-closing safety latches. Load chains are not acceptable rigging devices.

## 12. GUARDING/BARRICADING/SIGNAGE

- A. Use barricades to warn of holes in floor, missing handrails and other hazards created by work. **Barricade tape is not a rigid barrier and fall protection is required if the fall exposure is six feet or greater.** Barricade tape and materials shall be a minimum of 6-feet from the hazard it is identifying. All trenches or excavations shall be closed up or orange fenced at the end of the day.
- B. Barricades must be removed when the job is complete or the hazard no longer exists. Barricade the area of operation only. Inspect all barricades daily and repair as required. Yellow and black means "Enter with Caution." Red and black means "Danger Do Not Enter."
- C. Utilize barricade tape or proper signage to define areas including limited access zones, overhead work zones, and similar areas maintained for authorized personnel only.
- D. Approved caps or covers shall be provided for all exposed vertical reinforcing, conduit and similar hazards. Provide protection for all horizontal reinforcing, conduit and similar hazards to prevent cut and scrape type injuries.
- E. Provide covers for all floor openings, gaps or voids 2-inches or larger in its least dimension (including column blockouts). Cover materials will be adequate to suit the surrounding traffic. All floor hole covers shall be labeled with high visibility paint, "**Hole Cover-Do Not Remove**" and "**Peligro**", and secured to prevent displacement.

## 13. WELDING and CUTTING

- A. Fuel gas cylinders (oxygen/acetylene/LP gas, etc.) must be stored in their upright positions with caps in place and secured when not in use. Oxygen and fuel gas cylinders must be kept a minimum of 20-feet apart or stored in an approved storage unit.
- B. Oxygen/acetylene cylinders shall be transported / used / stored in approved carts only. Approved carts consist of a noncombustible barrier at least 5-feet high between oxygen/acetylene cylinders which meets a fire-resistance rating of at least ½-hour. Oxygen/acetylene cylinders not in approved carts will be required to meet the storage requirements of section 13.A. following each work shift.
- C. Gauges, gauge covers, valves, hoses and other torch set components will be inspected prior to each use. All defective components will be corrected prior to use of the assembly.
- D. Gauges shall be removed and caps in place when transported in mobile equipment.
- E. Flashback arrestors will be required for all torches between torch head and hose assembly.
- F. Cutting torches shall be lit with strikers, do not use a cigarette or butane lighter.
- F. **Welding Hoods:** Welding hoods should be attached to the hard hat. Soft hoods are not allowed when overhead hazards exist. Welders utilizing soft hoods shall have an approved hard hat readily available for use when not actively welding. A minimum of No. 5 shade lens will be required in welding hoods and goggles while cutting or welding using oxygen/acetylene cutting torches.

## 14. CRANES, HOISTING and LIFTING EQUIPMENT

- A. Lift calculations shall be completed prior to moving any piece of equipment. A critical lift plan shall be completed for any lift involving over 75% of the rated capacity, the use of two cranes, blind lifts or lifting involving special rigging/high value equipment.
- B. Valid annual crane annual inspection and valid crane operator's qualifications must be available on site prior to commencing work.
- C. All crane operators must be Certified Crane Operators (CCO) per ANSI B 30.5 standards. Each operator must be certified in the specific size and type of crane being utilized. Acceptable certifying agencies are:
  - National Commission for the Certification of Crane Operators (NCCCO)

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: \_\_\_\_\_

CC

Page 7 of 10

- North American Crane Bureau (NACB)
  - National Center for Construction Education and Research (NCCER)
- D. The operator will perform daily inspection of all cranes, rigging, and other components. These inspections will be documented and maintained for review by the contractor. Damaged equipment shall be tagged and immediately removed from service. Only qualified/authorized persons will perform hoisting, rigging and signal person activities. Wood materials are not permitted for use in vertical hoisting/lifting operations using rigging equipment.
  - E. Outrigger Pads and Floats: Cranes with outriggers shall ensure that all outriggers are fully deployed, in contact with sound surface and maintain crane in level position. Monolithic floats/supplemental pads shall be larger than the outrigger pads, of substantial material to withstand imposed loads and will be required under each outrigger pad regardless of the type of surface being set up on.
  - F. Means of communication between crane operator, riggers, Haskell employees, and all others exposed to overhead loads shall be agreed upon before work commences. Use of cellular phones or other devices that may distract the operator are prohibited while the crane is in operation.
  - G. Roadways and travel areas will be kept free of debris and stored materials. Subgrade will be sound and acceptable for both loads and travel. Protection of finished surfaces (Floors, walls and similar) must be provided when utilizing lifting equipment within existing facilities.
  - H. Only employees actively engaged in the operations involving cranes or hoisting equipment shall be around this equipment or in the areas served by the equipment. All site personnel should be aware of their surroundings and avoid walking beneath overhead loads.
  - I. Barricading for the swing radius of all cranes and similar lifting/hoisting equipment will be provided and maintained.
  - J. Maintain a minimum of twenty foot (20 ft.) clearance from all overhead energized or potentially energized power lines while cranes are in operation. Insulating shields, or other means of energy control, are recommended for all overhead lines where cranes could potentially come within 20 feet from the lines. Coordinate installation of shields with local utility.
  - K. When performing rigging operations or moving heavy equipment across floors, the weight capacities of the floors shall be verified along with the weights of the equipment and rigging hardware. Protection of floor, wall and similar surfaces will be protected when performing all lifting/hoisting tasks.
  - M. Hoisting / Lifting utilizing forklifts or similar equipment will be performed utilizing approved/engineered lifting attachments and in strict accordance with manufacturer requirements. Hoisting from forks or similar utilizing slings, chokers or similar will not be permitted.

## 15. VEHICLES and MOBILE EQUIPMENT

- A. **Only qualified and authorized personnel** will operate aerial lifts, forklifts, scissor lifts, and similar equipment. All such equipment will be operated safely and within safe speed limits. Seatbelts will be **worn at all times** while the operator is in the seat of equipment designed with seatbelts. Cell Phone use is not permitted while operating equipment.
- B. Subcontractors shall provide HCC project supervision with documentation of operator competency.
- C. All mobile equipment shall be inspected at mobilization and prior to each use. All construction mobile equipment will have documentation indicating the most recent inspection and all trained / authorized operators. Daily inspection logs shall be made available to HCC Safety Coordinator.
- D. Manufacturer's operation and safety manuals must be present and/or immediately available on the equipment for use by the authorized and trained operator.
- E. All motorized equipment must have an audible backup alarm as well as a warning horn for forward movement. Equipment designed for bi-directional operation, such as a track hoe, must have an alarm that sounds when moving in either direction. Equipment to be used at night or in low light conditions must have headlights.

H23121-A101

Contractor Initial: \_\_\_\_\_

Subcontractor Initial: \_\_\_\_\_

CC

Page 8 of 10

- F. Sound horns when rounding corners or entering or exiting buildings. The use of flagging persons or similar means must be utilized when obstructed views exist. The operator must stop immediately if they lose sight of the ground guide. Ground Guides must never stand directly behind a piece of equipment.
- G. Use of cellular phones or other devices that may distract the operator are prohibited for all types of mobile construction equipment when in use. This includes lifts, heavy equipment, mobile buggies and similar.
- H. Employees will be prohibited from riding on the tailgates or sides of trucks or other equipment. When riding in the bed of site trucks, all loose or heavy materials, supplies and tools shall be secured. Riding in the bed of mules or equipment without seats is prohibited.
- I. Maintain a minimum of twenty (20-feet) clearance from all overhead energized or potentially energized power lines while mobile equipment is in operation. Insulating shields, or other means of energy control, are recommended for all overhead lines where equipment could potentially enter within 10-feet from the lines. Coordinate installation of these shields with local utility.

**16. EMERGENCY RESPONSE/INCIDENT REPORTING**

- A. **Report all injuries and incidents to your supervisor immediately.** This immediate reporting allows for prompt medical treatment and more complete investigation. **Each contract partner is to promptly report ALL accidents or incidents to HCC Safety Coordinator or field management to ensure the appropriate coordination and administration of treatment is provided.** Failure to immediately report injuries or illnesses is grounds for disciplinary action. This includes non-work-related injuries and illnesses.
- B. In the event of an emergency, use any available means to contact your supervisor.
- C. In the event of an emergency that requires evacuation, all personnel will proceed in an orderly fashion to a designated assembly point. Remain in that area until instructed otherwise.
- D. Field management and contract partners are required to maintain first aid supplies in accessible locations. First aid logs must be maintained at the supply location.
- E. Field management including contract partners will coordinate, develop, revise and communicate an emergency response plan for utilization in the event an emergency or accident occurs.
- F. Each contract partner with two or more employees will have a minimum of two individuals certified in CPR and First Aid onsite.

**17. FINES FOR SAFETY VIOLATIONS**

- A. In order to ensure compliance with the HCC Safe Practices, HCC maintains a “zero tolerance” / non-compliance program that includes all subcontractors working on the project. This program is established to promote safety and to discipline offenders, and may lead to subcontractor dismissal and/or contract termination.
- B. HCC has the sole authority to determine what type of disciplinary action is utilized, up to and including removal from the project. At HCC’s discretion, this program may be used or superseded with a more stringent program depending on the severity of the infraction(s).
- C. The following is a non-inclusive list of penalties that may be implemented for safety violations. Any monetary penalties will result in a deductive change order to the subcontract. Understand that these penalties are the minimum prescribed for the project and that more stringent penalties may vary by trade/contractor.
  - a. **Safety Notices:** HCC has the authority to issue written safety notices. The contract partner is responsible for observing and correcting conditions and acts in a timely manner.
  - b. **First Offense Safety Citation and Fine:** HCC will issue safety citations to the subcontractor for non-compliant acts or conditions. At HCC’s discretion, a fine of \$1,000 will be deducted from the subcontractor’s subcontract per safety violation or unsafe act/condition.

H23121-A101

Contractor Initial: \_\_\_\_\_



Subcontractor Initial: CC

- c. **Repeat Offense Safety Citation and Fine:** A further infraction of a previously cited action or condition will result in the issuance of a repeat citation and a fine of \$5,000 deducted from the subcontract. The subcontractor's employee(s) committing the infraction may be removed from the jobsite for the duration of the project.
- d. **Removal from Project:** The removal procedure may be expanded to include the removal of the subcontractor's or sub-tier contractor's entire workforce where the subcontractor does not demonstrate a good faith effort to comply with HCC Safe Practices and make corrections in an effective and timely manner.


**18. CONFINED SPACES**

- A. Competent person must be on site for all confine space work.
- B. Air must be monitored to evaluate O2 levels, H2 levels, LEL levels, and CO levels.
- C. Retrieval and Rescue – 100% for a confined space entry.

**By signing this document, I acknowledge that I will advise my superintendent, Foreman and Field Crew of these Safe Practice Procedures.**

**Hemphill Construction Company Inc. values your safety and appreciates your compliance.**

Hemphill Construction inc. :	Site Support Group
Signature 	Signature 
Title <u> Vice President </u>	Title <u> Member </u>
Date <u> 2-15-24 </u>	Date <u> 2-15-2024 </u>

H23121-A101  
 Contractor Initial: 

Subcontractor Initial:  CC   
 Page 10 of 10

## **E-VERIFY NOTIFICATION**

**TO: Site Support Group**

**PROJECT: Madison County - Board of Supervisors  
Reunion Ph.2,STP-0055-02(208)LPA105278-701000, Madison Co,MS  
,  
Subcontract No. H23121-A101**

Due to new Federal regulations, Hemphill Construction Company Inc. is now participating in the e-verify employment verification program. Any subcontractor working for Hemphill Construction Company Inc. will also be required to participate. If you are already participating please provide Hemphill Construction Company Inc. with your e-verification number on the Subcontract EEV Certification. If you are not participating and you are a Corporation you must apply for an e-verify number. If you are not a Corporation please fill out the I-9 forms with a copy of the documents (ex. Driver's license, social security card, etc.) used for verification and return to Hemphill Construction Company Inc..

Sincerely,


A handwritten signature in blue ink that reads "Samantha Brown". The signature is written in a cursive, flowing style.

Samantha Brown  
Subcontractor Administrator

**SUBCONTRACTOR EEV CERTIFICATION**

**Project Name: Reunion Phase2,STP-005-02(208)LPA105278-701000,Madison Co,MS**  
**Subcontractor: Site Support Group**

By executing this Certification, the undersigned Subcontractor verifies its compliance with Senate Bill 2988 from the 2008 Mississippi Legislative Session, "Mississippi Employment Protection Act," as published in Laws, 2008 and codified in the Mississippi Code of 1972, as amended, and any rules or regulations promulgated by Mississippi Transportation Commission [ MTC], Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1 et seq., Mississippi Code of 1972, as amended) pursuant to the Act, stating affirmatively that the individual, firm, or corporation which is engaged under a contract with the **Prime Contractor** on behalf of the MTC has registered with and is participating in a federal work authorization program\* operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Immigration Reform and Control Act of 1986, Pub. L. 99-603, 100 Stat 3359, as amended. The undersigned agrees to inform **the Prime Contractor** if the undersigned is no longer registered or participating in the program.

  
EEV\* Company Identification Number [Required]

**The undersigned certifies that the above information is complete, true and correct to the best of my knowledge and belief. The undersigned acknowledges that any violation shall be subject to the cancellation of the contract, ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted by any agency, department or government entity for the right to do business in Mississippi for up to one (1) year, or both, any and all additional costs incurred because of the contract cancellation or the loss of any license or permit, and may be subject to additional felony prosecution for knowingly or recklessly accepting employment for compensation from an unauthorized alien as defined by 8 U.S.C. § 1324a(h)(3), said action punishable by imprisonment for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or both, in addition to such prosecution and penalties as provided by Federal law.**

BY: \_\_\_\_\_  
Authorized Officer or Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

**SWORN TO AND SUBSCRIBED** before me on this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

\* As of the effective date of the Mississippi Employment Protection Act, the applicable federal work authorization program is E-Verify operated by the U.S. Citizenship and Immigration Service of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration

Local Public Agency: \_\_\_\_\_

NOTICE OF REQUIREMENT FOR AFFIRMATIVE  
ACTION TO ENSURE EQUAL EMPLOYMENT  
OPPORTUNITY (EXECUTIVE ORDER 11246)

LPA: \_\_\_\_\_  
\_\_\_\_\_ County  
\_\_\_\_\_, Mississippi

Project No. \_\_\_\_\_  
County \_\_\_\_\_  
(Sub) Subcontract Request No. \_\_\_\_\_

I (We) \_\_\_\_\_ Prime Contractor on the above captioned project proposing to (sub) subcontract certain items of work to \_\_\_\_\_ (Sub) Subcontractor, hereby submit the following information regarding the heretofore mentioned (sub) subcontractor to comply with the contract provisions of the NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246).

Name: \_\_\_\_\_

P.O. Box and/or Physical Address: \_\_\_\_\_

City, State and Zip Code: \_\_\_\_\_

Telephone Number: ( ) \_\_\_\_\_

Employer Identification Number: 853438477

Actual Dollar Amount of the Subcontract Agreement: \_\_\_\_\_

Estimated Starting Date: \_\_\_\_\_

Estimated Completion Date: \_\_\_\_\_

Geographical Area: \_\_\_\_\_  
(List County, State and City if any portion of the contract is within the limits of an incorporated area)

Respectfully

submitted, Date 2-15 \_\_\_\_\_, 20 <sup>24</sup>

Prime Contractor

By:  \_\_\_\_\_  
Signature

Title

**(SUB) SUB-CONTRACT CERTIFICATION FOR FEDERAL AID PROJECTS**

Project No. STP-0055-02(208)

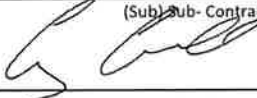
County Madison

(Sub) Subcontract Request No. 001

I (We) Hemphill Construction Company, Inc. proposed (Sub) Sub-contractor hereby certify that I (We) have , have not , participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that I (we) have , have not , filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under applicable filing requirements.

Date February 15, 2024

Site Support Group

By:   
(Sub) Sub-Contractor  
Signature

Member  
Title

**NOTE:**

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

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

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

(Submit signed original and attach to Request for Permission to Subcontract, Form RPS-1)



**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. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

## 2. Withholding (29 CFR 5.5)

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics,

including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 3. Payrolls and basic records (29 CFR 5.5)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or

subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

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

#### 4. Apprentices and trainees (29 CFR 5.5)

##### a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State

Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

##### b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 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 shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

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

**V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

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 watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 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. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum 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. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) 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.**

The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

**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 200.326.

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 200.326.

### **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.

## **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 contractor). "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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**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:**

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

(a) 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;

(b) 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

(c) 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)

2. 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.