

518032131 KANSAS DEPARTMENT OF TRANSPORTATION
I070-105 KA 2130-03 NHPP-A213(003)

CONTRACT PROPOSAL

1. The Secretary of Transportation of the State of Kansas [Secretary] will accept only electronic internet proposals from prequalified contractors for construction, improvement, reconstruction, or maintenance work in the State of Kansas, said work known as Project No.:

I070-105 KA 2130-03 NHPP-A213(003)

The general scope, location and net length are:

BRIDGE REPAIR. I-70 BR NM 173, NM 174, NM 177 & NM 178 OF THE LEWIS & CLARK VIADUCT IN KANSAS CITY IN WY CO. LENGTH IS 0.300 MI.

2. This is the Proposal of [Contractor] to complete the Project for the amount set out in the accompanying Unit Prices List.

3. The Contractor makes the following ties and riders as part of its Proposal in addition to state ties, if any:

4. Contractors and other interested entities may examine the Bidding Proposal Form/Contract Documents (see paragraph 11 below) at the County Clerk's Office in the County in which the Project is located and at the Kansas Department of Transportation [KDOT] Bureau of Construction and Materials, Eisenhower State Office Building, 700 SW Harrison, Topeka, Kansas 66603. Contractors may examine and print the Bidding Proposal Form/Contract Documents by using KDOT's website at <http://www.ksdot.org> and choosing the following selections: "Doing Business", "Bidding & Letting" and "Proposal Information", and using the links provided in the Project information for this project. KDOT will not print and mail paper copies of Proposal Forms. Contractors shall notify KDOT of their intent to bid as a prime contractor by identifying themselves as a Bid Holder on the website above. Contractors shall furnish this notice no later than the close of business on the Monday preceding the scheduled Letting Date. For a fee, Contractors and other interested entities may order paper copies of the KDOT Standard Specifications for State Road and Bridge Construction, 2015 Edition, [Standard Specifications] by using KDOT's website at <http://www.ksdot.org> and choosing the following selections: "Doing Business", "Bidding & Letting" and "Specifications".

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5. Contractors shall use the AASHTO's EXPEDITE software in combination with the electronic bidding system file created for the Project with EXPEDITE software [EBS file] to generate an electronic internet proposal. The EXPEDITE software and Project EBS file are available on Bid Express' website at <http://www.bidx.com>.

6. Contractors shall only use the EXPEDITE software to create a proposal and submit an electronic internet proposal to KDOT using the Bid Express website at <http://www.bidx.com>.

7. The KDOT Bureau of Construction and Materials will only accept electronic internet proposals on-line using Bid Express until 1:00 P.M. Local Time on the Letting Date. KDOT will open and read these proposals at the Eisenhower State Office Building, 700 SW Harrison, Topeka, Kansas 66603 at 1:30 P.M. Local Time on the Letting Date. An Audio Broadcast of the Bid Letting is available at <http://www.ksdot.org/burconsmain/audio.asp>.

8. The Contractor shall execute a contract for the proposed work within ten (10) business days after notice of the award of the contract.

9. The Contractor shall complete the work within ... working days and number of cleanup days allowed by the Standard Specifications subsection 108.4 or within the time specified in Project Special Provision "Work Schedule", if applicable.

10. The Contractor shall complete the Project according to the plans, Standard Specifications, provisions identified in the Special Provision List and all other Contract Documents identified in Standard Specifications subsection 101.3.

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11. The undersigned declares that the Contractor has carefully examined the Bidding Proposal Form for the Project. The Contractor understands the following:

- * The Bidding Proposal Form consists of the following documents: the Project EBS file on the Bid Express website (which includes DOT Form 202, required contract provisions, and the Unit Prices List), special provision list, project special provisions, special provisions, Standard Specifications, plans, exploratory work documents, any additional contract information, any addenda, and any amendments the Secretary provides for the Project. The Contractor can obtain these documents at KDOT's website (see paragraph 4).
- * The special provision list identifies all required contract provisions, project special provisions and special provisions that apply to the Project.
- * The Bidding Proposal Form becomes the Contractor's Proposal after the Contractor completes the EBS file, electronically signs the Proposal where required on DOT Form 202, and submits the completed EBS file documents and bid bond to KDOT using Bid Express. The special provision list, project special provisions, special provisions, Standard Specifications, plans, exploratory work documents, any additional contract information, and any addenda are incorporated by reference into the Proposal. These documents are part of the Contractor's Proposal.
- * In electronically signing this Proposal, the Contractor waives the right to claim that the Contractor misunderstood the contents of the Proposal or the procurement process.

12. The Contractor has inspected the actual location of the work. The Contractor has determined the availability of materials. The Contractor has evaluated all quantities and conditions. In electronically signing this Proposal, the Contractor waives the right to claim that the Contractor misunderstood the scope of the work.

13. SPECIAL PROVISIONS REQUIRING INFORMATION. The following Required Contract Provisions (I-XI) require the Contractor to furnish information. The current versions of these provisions are contained in the Project EBS file. Some or all of these apply to the Project as indicated in the Special Provision List. The Contractor shall complete these provisions within the EBS file. When these documents are required, the Secretary will reject proposals that fail to contain completed Provisions I, II, IV or V in the EBS file and may reject proposals that fail to contain completed Provisions III, VI, VII, VIII, IX, X or XI in the EBS file.

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- I. 08-10-66 Certification-Noncollusion & History of Debarment
- II. 04-30-82 Certification-Financial Prequalification Amount
- III. 08-04-92 Certification-Contractual Services with a Current Legislator or a Current Legislator's Firm
- IV. 04-26-90 Declaration-Limitations on Use of Federal Funds for Lobbying
- V. 07-19-80 DBE Contract Goal
- VI. 10-10-00 Price Adjustment for Fuel
- VII. 08-08-01 Furnishing and Planting Plant Materials
- VIII. 06-01-06 Price Adjustment for Asphalt Material
- IX. 05-18-07 Repair (Structures)
- X. 08-31-09 Price Adjustment for Emulsified Asphalt
- XI. 01-01-11 Kansas Department of Revenue Tax Clearance Certificate

14. The funding source for this Project is FEDERAL/STATE.

On Projects involving City or County funds, the Secretary acts as the Agent of the City or County and as the administrator of federal or state funds. Each governmental entity's responsibilities are described in a contract between the entities which is available upon request.

15. FEDERAL AID DOCUMENTS INCLUDED IN PROPOSAL. If the Project is supported in whole or in part by Federal funds, the latest revisions of the following provisions (I - VI) also apply to the Project. These documents are not included in the Project EBS file but are accessible on KDOT's website and incorporated by reference into the proposal like other provisions and the exploratory work documents.

- I. 11-03-80 Affirmative Action For EEO
- II. 11-15-96 Affirmative Action & EEO Policies
- III. 09-06-94 U.S. DOT Fraud Hotline
- IV. FHWA-1273 Federal-Aid Required Contract Provisions
- V. 03-10-06 Use Of DBE As Aggregate Supplier/Regular Dealer
- VI. 07-18-80 Use Of DBE

16. The Secretary reserves the right to reject any and all proposals and to waive any or all technicalities.

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17. SIGNATURE SECTION:

A. Electronic Internet Proposal

The person submitting the electronic internet Proposal, on the Contractor's behalf, shall be the person whose digital identification is used to submit this Proposal. That person shall complete paragraphs B and C. The person whose digital identification is used to electronically sign this Proposal binds the Contractor to this Proposal and binds the named individual to the certification in paragraph B.

B. Certification

I CERTIFY THAT I AM AUTHORIZED TO REPRESENT THE CONTRACTOR IN PREPARING AND PRESENTING THIS PROPOSAL. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING (INCLUDING BUT NOT LIMITED TO THE INFORMATION CONTAINED IN THE SPECIAL PROVISIONS REFERENCED IN PARAGRAPH 13) IS TRUE AND CORRECT. EXECUTED ON _____ (DATE IN MM/DD/YYYY FORMAT).

C. Signature

Number of company or joint venture: _____

Name of company or joint venture:

Name of person signing: _____

Title of the person signing: _____

Signature: Electronic Internet Proposal

RELEASED FOR CONSTRUCTION:

Date: _____

Chief of Construction and Materials

KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION LIST

PAGE: 1
DATE: 02/20/18

STATE PROJECT NO: I070-105 KA 2130-03

STATE CONTRACT NO 518032131

PREPARED DATE:

WAGE AREA: 5

REVISED DATE:

PRIMARY DISTRICT: 1

PRIMARY COUNTY: WYANDOTTE

DESCRIPTION: BRIDGE REPAIR. I-70 BR NM 173, NM 174, NM 177 & NM 178 OF THE LEWIS & CLARK VIADUCT IN KANSAS CITY IN WY CO. LENGTH IS 0.300 MI.

NOTE: THE FOLLOWING LIST OF SPECIAL PROVISIONS ARE FOR THIS PROJECT. OMISSION OF ALL OR PART OF A SPECIAL PROVISION IN THE ATTACHED PROPOSAL (CONTRACT) DOES NOT RELIEVE THE CONTRACTOR OF THE RESPONSIBILITY FOR OBTAINING THE COMPLETE PROVISION AS LISTED.

PROVISION NO. DESCRIPTION

08-10-66-R05	REQUIRED CONTRACT PROVISION-NONCOLLUSION / HISTORY-DEBARMENT
04-30-82-R07	REQUIRED CONTRACT PROVISION-FINANCIAL PREQUALIFICATION
08-04-92-R03	REQUIRED CONTRACT PROVISION-CONTRACTUAL SERVICES-LEGISLATOR
04-26-90-R05	REQUIRED CONTRACT PROVISION-LIMITS OF FED FUNDS FOR LOBBYING
07-19-80-R13	REQUIRED CONTRACT PROVISION-DBE CONTRACT GOAL
11-03-80-R09	REQUIRED CONTRACT PROVISION-NOTICE FOR AFFIRMATIVE ACTION
11-15-96-R05	REQUIRED CONTRACT PROVISION-EEO REQUIREMENT
02-01-95-R02	REQUIRED CONTRACT PROVISION-AREA PRACTICE DG-JO-LV-MI-SN-WY
09-06-94-R01	NOTICE TO CONTRACTORS (USDOT HOTLINE)
01-01-11-R01	REQUIRED CONTRACT PROVISION-TAX CLEARANCE CERTIFICATE
KS180009	MINIMUM WAGE RATE (AREA 5)
FHWA-1273	REQUIRED CONTRACT PROVISION-FEDERAL-AID CONSTRUCTION CONTRACTS
03-10-06-R01	REQUIRED CONTRACT PROVISION-DBE SUPPLIERS/REGULAR DEALERS
07-18-80-R28	REQUIRED CONTRACT PROVISION-UTILIZATION OF DBE'S
15-ER-1-R12	ERRATA SHEET FOR STD SPEC BOOK FOR RD & BR CONST, 2015 ED
15-01011-R05	ENVIRONMENTAL CONCERNS - MIGRATORY BIRD TREATY ACT
15-01013	REQUIRED ATTENDANCE-PRE-BID CONFERENCE
15-01016-R01	PROSECUTION AND PROGRESS
15-01017	CARGO PREFERENCE ACT
15-01018	CONTROL OF MATERIALS
15-01019	CONTROL OF WORK
15-01021	BIDDING REQUIREMENTS AND CONDITIONS
15-04002	STRUCTURAL CONCRETE
15-04005	GENERAL CONCRETE
15-07011	CONCRETE STRUCTURE CONSTRUCTION
15-07006	EXPANSION JOINTS
15-08001-R02	WORK ZONE TRAFFIC CONTROL AND SAFETY (FOR 1R'S)
15-11003-R01	AGGREGATES FOR CONCRETE NOT PLACED ON GRADE
15-14001	AIR-ENTRAINING ADMIXTURES FOR CONCRETE
15-14002	SHEET MATERIALS FOR CURING CONCRETE
15-17001	PORTABLE CHANGEABLE MESSAGE SIGNS
15-22003	MULTI - COMPONENT LIQUID PAVEMENT MARKING MATERIAL
15-22005	IMAGE SYSTEMS
15-25001-R05	PART V
15-25002	CONSTRUCTION MANUAL - PART V

KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION LIST

PAGE: 2
DATE: 02/20/18

STATE PROJECT NO: I070-105 KA 2130-03

STATE CONTRACT NO 518032131

PREPARED DATE:

WAGE AREA: 5

REVISED DATE:

PRIMARY DISTRICT: 1

PRIMARY COUNTY: WYANDOTTE

DESCRIPTION: BRIDGE REPAIR. I-70 BR NM 173, NM 174, NM 177 & NM 178 OF THE LEWIS & CLARK VIADUCT IN KANSAS CITY IN WY CO. LENGTH IS 0.300 MI.

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PROVISION NO. DESCRIPTION

15-26001-R05	MATERIALS CERTIFICATIONS
15-PS0018	COMBINATION, TIED BIDS ON 1R PROJECTS WITH FEDERAL-AID FUNDS
15-WS0073	WORK SCHEDULE
15-RF0078	RAILROAD FLAGGING REQUIREMENTS

END OF SPECIAL PROVISION LIST

REQUIRED CONTRACT PROVISION

CERTIFICATION - NONCOLLUSION AND HISTORY OF DEBARMENT

K.A.R. 36-30-4, 49 C.F.R. 29.335, 23 U.S.C. 112(c), 49 U.S.C. 322

Complete the exceptions below if applicable. The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Certification.

NONCOLLUSION

I certify that the Contractor submitting this bid has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the submitted bid.

HISTORY OF DEBARMENT

I certify that, except as noted below, the Contractor submitting this bid and any person associated with this Contractor in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or any position involving the administration of federal funds:

1. Are not currently suspended, debarred, voluntarily excluded or disqualified from bidding by any federal or state agency;
2. Have not been suspended, debarred, voluntarily excluded or disqualified from bidding by any federal or state agency within the past three years;
3. Do not have a proposed debarment pending;
4. Within the past three years, have not been convicted or had a civil judgment rendered against them by a court of competent jurisdiction in any matter involving fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; and
5. Are not currently indicted or otherwise criminally or civilly charged by a federal, state, or local government with fraud, anti-trust violations, theft, official misconduct, or other offenses indicating a lack of business integrity or business honesty; and
6. Have not had one or more federal, state, or local government contracts terminated for cause or default within the past three years.

_____ Answer 'Yes' if there are exceptions to the above described circumstances. Answer 'No' if there are no exceptions. The exceptions, if any, are:

REQUIRED CONTRACT PROVISION

CERTIFICATION - FINANCIAL PREQUALIFICATION AMOUNT

Select the appropriate response below to indicate whether this Proposal exceeds the Contractor's financial prequalification amount. The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Certification.

I understand that I may be required to identify the outstanding contract and subcontract work of my firm, association or corporation on DOT Form 284 prior to an award of contract. Unless I obtain prior approval, I understand that the Secretary may reject this Proposal if the dollar value of work on this Contract combined with unearned amounts on our unfinished contract and subcontract work exceeds our prequalification amount.

I certify that the amount of this Proposal plus the total unearned amount of other contracts with the Kansas Department of Transportation plus the unearned amount of all other contracts in this state or other states (exceeds)/(does not exceed) the financial prequalification amount of our firm, association or corporation. I also certify that our firm, association, or corporation has the financial ability to perform the work.

If this Proposal exceeds the financial prequalification amount, I certify that I obtained approval to submit this bid from the KDOT representative I have listed below. (Prior approval to exceed the prequalification limit may be made by telephone or personal contact).

KDOT Approval Granted By: _____

Date: _____

REQUIRED CONTRACT PROVISION

CERTIFICATION - CONTRACTUAL SERVICES WITH A CURRENT LEGISLATOR OR A
CURRENT LEGISLATOR'S FIRM

Select the appropriate response below to indicate whether this contract is with a legislator or a firm in which a legislator is a member. The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Certification.

Kansas Law, K.S.A. 46-239(c), requires this agency to report all contracts entered into with any legislator or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. The Contractor certifies that:

This Contract (is)/(is not) with a legislator or a firm in which a legislator is a member. If this contract is with a legislator, that legislator is:

Name: _____

Address: _____

(City) (State) (Zip Code)

Business Telephone: _____

REQUIRED CONTRACT PROVISION

DECLARATION
LIMITATIONS ON USE OF FEDERAL FUNDS FOR LOBBYING
PURSUANT TO 31 U.S.C. 1352

The Contractor's signature on page 5 of the Contractor's Proposal supplies the necessary signature for this Declaration and the certifications contained therein.

DEFINITIONS:

1. Designated Entity: an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.
2. Federal Grant: An award of financial assistance by the Federal government. (Federal Aid Highway Program is considered a grant program.)
3. Influencing (or attempt): making, with the intent to influence, any communication to or appearance before any designated entity in connection with the making of a Federal contract or Federal grant.
4. Person: An individual, corporation, company, association, authority, firm, partnership, society, State, or local government.
5. Recipient: All contractors, subcontractors, subgrantees, at any tier, and other persons receiving funds in connection with a Federal grant.

EXPLANATION:

As of December 23, 1989, 31 U.S.C. section 1352 limits the use of appropriated Federal funds to influence Federal contracting. Under this law, recipients of Federal grants shall not use appropriated funds to pay any person for influencing or attempting to influence a designated entity in connection with the making of a Federal grant or the extension, continuation, renewal, amendment or modification of a Federal grant. These restrictions apply to contracts and grants exceeding \$100,000.00. Federal law requires submission of this declaration. If a recipient fails to file the declaration or amend a declaration, the recipient shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each failure. If the recipient uses appropriated Federal funds to influence or to attempt to influence a designated entity contrary to this provision, the recipient shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such payment.

CERTIFICATIONS:

I certify that the Contractor recipient (including its owners, partners, directors, officers, or principals) has not paid and will not pay federally appropriated funds to any person for influencing or attempting to influence a designated entity in connection with the making of a Federal grant, or the extension, continuation, renewal, amendment or modification of a Federal grant.

_____ Answer 'Yes' if a person registered under the Lobbying Disclosure Act of 1995 (Registrant) has made lobbying contacts on the Contractor recipient's behalf with respect to this contract. Answer 'No' if no Registrant has lobbied on the Contractor recipient's behalf with respect to this contract. The Registrants, if any, are:

I certify that the Contractor recipient will report payments made to a person for influencing or attempting to influence a designated entity, that come from funds other than appropriated Federal funds. The Contractor recipient shall report such payments on Form LLL "DISCLOSURE FORM TO REPORT LOBBYING" according to the instructions and may obtain Form LLL from the KDOT Bureau of Construction and Materials.

I certify that, if information contained in this DECLARATION changes, the Contractor recipient will amend the DECLARATION within 30 days of the change(s).

I certify that the Contractor recipient will provide to and require subcontractors to sign a like DECLARATION, if the subcontract work exceeds \$100,000.

The Contractor recipient understands that this declaration is a material representation of fact and the Secretary will have relied upon this declaration in entering into a contract with the Contractor recipient.

NOTE: This Reporting requirement does not apply to payments made to the recipient's regular employees and contracts, subcontracts, and grants less than \$100,000.

REQUIRED CONTRACT PROVISION
TAX CLEARANCE CERTIFICATE

___ Answer 'Yes' if the Contractor has a current Tax Clearance Certificate.
Answer 'No' if the Contractor does not have a current Tax Clearance Certificate. Insert the Tax Clearance Confirmation Number if available at the time of bidding:_____

Contractors shall have a current Tax Clearance Certificate from the Kansas Department of Revenue [KDOR] at the time of contract award. The Tax Clearance process is a tax account review by KDOR to determine that the Contractor's account is compliant with Kansas tax laws administered by the Director of Taxation. The Secretary will reject the Contractor's Proposal as non-responsive if the Contractor does not have a current Tax Clearance Certificate at the time of contract award.

To obtain a Tax Clearance Certificate, the Contractor shall complete and submit to KDOR an Application for Tax Clearance obtained from KDOR's website at <http://www.ksrevenue.org/taxclearance.htm>. The Application Form can be completed and submitted on-line, by mail, or by fax. After the Contractor submits the Application, KDOR will provide the Contractor a Transaction ID number. The Contractor shall use the Transaction ID number to retrieve the Tax Clearance Certificate. Decisions on on-line applications are generally available the following business day.

After the Contractor obtains the Tax Clearance Certificate, the Contractor shall insert on this Required Contract Provision the Confirmation Number contained in the Certificate or the Contractor shall submit a copy of the Tax Clearance Certificate to the KDOT Bureau of Construction and Materials by hand delivery, mail, e-mail or fax. Before awarding a contract, the Bureau of Construction and Materials will authenticate the Certificate through the Confirmation Number inserted on this Required Contract Provision or contained on the Certificate submitted.

If the Contractor is unable to retrieve the Tax Clearance Certificate or if KDOR denies the Contractor's Application for Tax Clearance, the Contractor shall call KDOR's Special Projects Team at 785-296-3199 to determine why KDOR failed to issue the Certificate.

Tax Clearance Certificates are valid for 90 days after issue. To renew a clearance, submit a new Tax Clearance Application. Information pertaining to a Tax Clearance is subject to change for various reasons, including a state tax audit, federal tax audit, agent actions, hearings, and other legal actions. The Tax Clearance Certificate is not "clearance" for all types of taxes the state of Kansas may assess.

Subcontractors also shall have a current Tax Clearance Certificate from KDOR before the Secretary approves them for subcontract work. The Contractor shall submit to the KDOT Field Office the Subcontractor's Tax Clearance Certificate with KDOT Form 259, Request for Approval of Subcontractor.

KANSAS DEPARTMENT OF TRANSPORTATION
UNIT PRICES LIST

STATE CONTRACT NO: 518032131
STATE PROJECT NO: I070-105 KA 2130-03

PREPARED DATE: 02-28-18
REVISED DATE:

SECTION 01 COMMON ITEMS

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
1 025323	MOBILIZATION	LSUM 1.00				
2 070626	MOBILIZATION (DBE)	LSUM 1.00				
3 025200	REMOVAL OF EXISTING STRUCTURES	LSUM 1.00				
4 025099	REINFORCING STEEL (REPAIR) (GRADE 60) (EPOXY) (SET PRICE)	LBS. 1.00	3.000		\$3.00	
5 025105	REINFORCING STEEL (REPAIR) (GRADE 60) (SET PRICE)	LBS. 1.00	2.000		\$2.00	
6 025324	TRAFFIC CONTROL	LSUM 1.00				
7 070580	FLAGGER (SET PRICE)	HOUR 1.00	65.000		\$65.00	

SECTION 02 BR. NO. 70-105-17.25 (173)

8 014287	EXPANSION JOINT (STRIP SEAL ASSEMBLY)	LNFT 22.00				
9 072350	CONCRETE (GRADE 4.0) (AE)	CUYD 2.90				

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CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION
UNIT PRICES LIST

STATE CONTRACT NO: 518032131
STATE PROJECT NO: I070-105 KA 2130-03

PREPARED DATE: 02-28-18
REVISED DATE:

SECTION 02 BR. NO. 70-105-17.25 (173)

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS CTS	AMOUNT BID -IN NUMBERS- DOLLARS CTS
10 070993	EXPANSION JOINT (MEMBRANE SEALANT)	LNFT 7.00		
11 014290	BRIDGE CURB REPAIR	LNFT 1,276.00		
12 025522	AREA PREPARED FOR PATCHING	SQYD 50.00		
13 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD 25.00		
14 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD 3,210.00		
15 071495	BRIDGE PAINTING (ORGANIC ZINC W/ ACRYLIC SYSTEM)	LSUM 1.00		
16 014402	ENVIRONMENTAL PROTECTION	LSUM 1.00		

SECTION 03 BR. NO. 70-105-17.19 (174)

17 071495	BRIDGE PAINTING (ORGANIC ZINC W/ ACRYLIC SYSTEM)	LSUM 1.00		
18 014402	ENVIRONMENTAL PROTECTION	LSUM 1.00		

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CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION
UNIT PRICES LIST

STATE CONTRACT NO: 518032131
STATE PROJECT NO: I070-105 KA 2130-03

PREPARED DATE: 02-28-18
REVISED DATE:

SECTION 04 BR. NO. 70-105-17.15 (177)

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID		AMOUNT BID	
			-IN NUMBERS- DOLLARS	CTS	-IN NUMBERS- DOLLARS	CTS
19 014287	EXPANSION JOINT (STRIP SEAL ASSEMBLY)	LNFT 32.00				
20 072350	CONCRETE (GRADE 4.0) (AE)	CUYD 4.00				
21 025100	REINFORCING STEEL (GRADE 60)	LBS. 230.00				
22 025479	DRILLING AND GROUTING	EACH 60.00				
23 070993	EXPANSION JOINT (MEMBRANE SEALANT)	LNFT 33.00				
24 014290	BRIDGE CURB REPAIR	LNFT 112.00				
25 025522	AREA PREPARED FOR PATCHING	SQYD 205.00				
26 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD 5.00				
27 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD 2,053.00				
28 013302	PCCP JOINT AND CRACK PATCHING (PARTIAL DEPTH)	SQYD 40.00				

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CONTRACTOR

KANSAS DEPARTMENT OF TRANSPORTATION
UNIT PRICES LIST

STATE CONTRACT NO: 518032131
STATE PROJECT NO: I070-105 KA 2130-03

PREPARED DATE: 02-28-18
REVISED DATE:

SECTION 04 BR. NO. 70-105-17.15 (177)

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS CTS	AMOUNT BID -IN NUMBERS- DOLLARS CTS
29 071495	BRIDGE PAINTING (ORGANIC ZINC W/ ACRYLIC SYSTEM)	LSUM 1.00		
30 014402	ENVIRONMENTAL PROTECTION	LSUM 1.00		

SECTION 05 BR. NO. 70-105-17.20 (178)

31 014287	EXPANSION JOINT (STRIP SEAL ASSEMBLY)	LNFT 79.00		
32 072350	CONCRETE (GRADE 4.0) (AE)	CUYD 13.30		
33 070993	EXPANSION JOINT (MEMBRANE SEALANT)	LNFT 312.00		
34 014290	BRIDGE CURB REPAIR	LNFT 185.00		
35 025522	AREA PREPARED FOR PATCHING	SQYD 100.00		
36 025524	AREA PREPARED FOR PATCHING (FULL DEPTH)	SQYD 50.00		
37 072356	MULTI-LAYER POLYMER CONCRETE OVERLAY	SQYD 2,658.00		

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UNIT PRICES LIST

STATE CONTRACT NO: 518032131
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SECTION 05 BR. NO. 70-105-17.20 (178)

LINE/ ITEM NUMBER	ITEM DESCRIPTION	UNITS/ ESTIMATED QUANTITY	UNIT BID -IN NUMBERS- DOLLARS CTS	AMOUNT BID -IN NUMBERS- DOLLARS CTS
38 071495	BRIDGE PAINTING (ORGANIC ZINC W/ ACRYLIC SYSTEM)	LSUM 1.00		
39 014402	ENVIRONMENTAL PROTECTION	LSUM 1.00		

SECTION 06 PAVEMENT MARKING ITEMS

40 023140	PAVEMENT MARKING (MULTI-COMPONENT) (WHITE) (6")	LNFT 2,658.00		
41 023141	PAVEMENT MARKING (MULTI-COMPONENT) (WHITE) (8")	LNFT 553.00		
42 023428	PAVEMENT MARKING (MULTI-COMPONENT) (WHITE) (12")	LNFT 40.00		
43 023192	PAVEMENT MARKING (MULTI-COMPONENT) (YELLOW) (6")	LNFT 2,879.00		

GRAND TOTAL : \$70.00

-

Check: 00000000

CONTRACTOR

General Decision Number: KS180009 01/05/2018 KS9

Superseded General Decision Number: KS20170009

State: Kansas

Construction Type: Highway

Counties: Johnson, Miami and Wyandotte Counties in Kansas.

HIGHWAY CONSTRUCTION PROJECTS

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.35 for calendar year 2018 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.35 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2018. The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date
 0 01/05/2018

BOIL0083-001 01/01/2017

	Rates	Fringes
BOILERMAKER.....	\$ 36.56	28.11

BRKS0015-002 04/01/2016

	Rates	Fringes
Bricklayer, Stonemason.....	\$ 34.35	18.67

CARP4088-006 05/01/2014

JOHNSON AND WYANDOTTE COUNTIES

	Rates	Fringes
CARPENTER.....	\$ 36.05	14.95

CARP4088-007 05/01/2014

MIAMI COUNTY

	Rates	Fringes
CARPENTER.....	\$ 33.88	14.95

 ELEC0053-001 09/04/2016

JOHNSON (EAST OF MONTICELLO, OLATHE, AND SPRING HILL TOWNSHIPS)
 AND WYANDOTTE COUNTIES

	Rates	Fringes
Line Construction:		
TELEPHONE AND TELEGRAPH		
WORK INCLUDING CATV WORK:		
CABLE SPLICERS; AIR		
PRESSURE TECHNICIANS;		
CENTRAL OFFICE EQUIPMENT		
MAN.....	\$ 23.31	17.5%+6.70
EQUIPMENT OPERATOR		
(TRENCHERS AND ALL OTHER		
EQUIPMENT).....	\$ 22.13	17.5%+6.66
GROUNDMAN - WINCH DRIVER...	\$ 16.76	20.5%+5.00
GROUNDMAN.....	\$ 13.49	17.5%+6.40
TELEPHONE LINEMAN AND		
INSTALLER REPAIRMAN; CATV		
TERMINATOR; EQUIPMENT		
OPERATOR (1/4 YD. BACKHOE		
AND LARGER AND D-4		
CRAWLERS AND LARGER).....	\$ 23.31	17.5%+6.70

 ELEC0053-002 08/30/2015

JOHNSON COUNTY (EAST OF MONTICELLO, OLATHE, AND SPRING HILL
 TOWNSHIPS) AND WYANDOTTE COUNTIES

	Rates	Fringes
Line Construction:		
LINE CONSTRUCTION:		
GROUNDMAN POWDERMAN.....	\$ 27.84	33%+5.00
GROUNDMAN.....	\$ 26.76	29.5%+5.00
LINEMAN OPERATOR.....	\$ 38.37	29.5%+5.00
LINEMAN.....	\$ 41.52	29.5%+5.00
POLE TREATING:		
POLE TREATING GROUNDMAN....	\$ 25.98	33%+5.00
POLE TREATING SPECIALIST...	\$ 44.34	33%+5.00
POLE TREATING TRUCK DRIVER.	\$ 25.23	34.5%+5.00
TRANSMISSION LINES:		
(RAILROAD AND CROSS		
COUNTRY)		
GROUNDMAN, POWDERMAN.....	\$ 27.84	33%+5.00
GROUNDMAN.....	\$ 25.98	33%+5.00
LINEMAN OPERATOR.....	\$ 37.25	33%+5.00
LINEMAN.....	\$ 40.31	33%+5.00

 ELEC0124-005 08/31/2015

	Rates	Fringes
Communication Technician.....	\$ 34.16	20.37
Electricians, Including Low Voltage.....	\$ 34.16	20.37

ELEC0304-001 07/02/2017

JOHNSON (Except that portion East of Monticello, Olathe, and
Spring Hill Townships); MIAMI COUNTY

	Rates	Fringes
Cable Splicer.....	\$ 43.05	18.83
Groundman.....	\$ 24.38	10.97
Line truck and equipment operators.....	\$ 33.80	16.14
Linemen.....	\$ 41.00	18.24
Traffic signal technician.....	\$ 39.95	6.10+29%

ENGI0101-009 04/01/2016

	Rates	Fringes
Power equipment operators:		
GROUP 1.....	\$ 35.82	15.99
GROUP 2.....	\$ 34.78	15.99
OILERS/DRIVERS (ALL TYPES) ..	\$ 30.31	15.99
OILERS.....	\$ 29.72	15.99

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Asphalt roller operator, finish; asphalt paver and
spreader; asphalt plant operator; concrete plant operator;
la tourneau roter (all tiller types); concrete mixer
paver; slip form paver operator (CMI, Rex, Gomeco or
equal); finishing machine operator; auto grader or trimmer
or sub-grader; side discharge spreader; concrete pump
operator; back hoe; blade operator (all types); bulldozer
operator; high loader - fork lift - skid loader (all
types); quad track; scraper operators (all types); push
cat; ditching machine; boilers - 2; booster pump on dredge;
dredge engineman, dredge operator; tow boat operator;
hoisting engineer (2 active drums); crane operator; derrick
or derrick trucks; drag line operator; pile drive operator;
pitman crane or boom truck (all types); shovel operator;
truck crane; clamshell operator; drilling or boring machine
(rotary - self propelled); boring machine (truck or crane
mounted); skimmer scoop operator; mucking machine operator;
sideboom cats; locomotive operator (standard gage);
drillcat with compressor mounted (self-contained) or
similar type self propelled rotary drill (not air tract);
mechanics and welders (field andplants); wood and log
chippers (all types); greaser

GROUP 2 - A-Frame truck operator, articulated dump truck;
hoisting engine (one drum); roller operator (with or
without blades); boilers (1); distributor operator; fireman
rig; tank car heater operator (combination boiler and

booster); chip spreader; back filler operator; farm tractor (all attachments); multiple compactor; concrete mixer operator, skip loader; elevating grader operator; pavement breaker, self-propelled hydra-hammer (or similar type); power shield; churn drill operator; concrete saws (self propelled); conveyor operator; float operator; form grader operator; screening and washing plant; siphons and jets; vibrating machine operator (not hand held); crusher operator; conveyor operator; paymill operator; maintenance operator; welding machine; compressor, pumps; self-propelled street broom or sweeper; stump cutting machine; straw blower.

FOOTNOTE:

HOURLY PREMIUMS

FOLLOWING CLASSIFICATIONS SHALL RECEIVE (\$1.00) ABOVE GROUP 1 RATE: Clamshells - 3 yd. capacity or over - crane or rigs, 80 ft. of boom or over (including jib) - draglines, 3 yd.capacity or over - piledrivers 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over.

 * IRON0010-003 04/01/2017

	Rates	Fringes
Ironworkers:		
JOHNSON, WYANDOTTE COUNTIES.	\$ 32.65	28.85
MIAMI COUNTY		
(All other work).....	\$ 24.50	21.78
(Only to include major bridge crossings over a body of water, power plants, new major dam or lock projects, major missile site alterations and new television tower projects).....	\$ 29.65	28.85

 LABO1290-006 04/01/2017

MIAMI COUNTY

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 29.58	15.23
GROUP 2.....	\$ 30.79	15.23

LABORERS CLASSIFICATIONS

GROUP 1: General laborer - Carpenter Tenders, Salamander Tenders, Loading Trucks under bins, Hoppers and Conveyors, Track Men and all other General Laborers, Air Tool Operator, Cement Handler (Bulk or Sack), Chain or Concrete Saw, Deck Hands, Dump Man or earth fill, Georgie Buggies Man, Material Batch Hopper Man, Scale Man, Material Mixer Man, (except on Manholes), Cofferdams, Abatments and Pier Hole Men working below ground, Riprap Pavers Rock, Black or

Brick Signal Man, Scaffolds over ten feet not self supported from ground up, Skipmanor concrete, paving, Wire Mash Setters or concrete paving, Pipelayer on all work in connection with Sewer, Water, Gas.Gasoline, Oil, Drainage Pipe, Conduit Pipe, Tile and Duct Lines and all other pipelines whether pressurized or non-pressurized, regardless of type of material, Power Tool Operator, all work in connection with Hydraulic or General Dredging Operatons, Form Setter Helpers Pudlers (paving only), Crusher Feeder, Men handling creosote ties on creosote materials, Men working with and handling epoxy material or materials (where special protection is required), Topper of Standing Trees, Batter Board Man on Pipe and Ditch work, Feeder Man on Wood Pulvarizer Board and Willow Mat Weavers and Cable Tiers on River Work, all Laborers working on underground tunnels where compressed air is not used.

GROUP 2: Spreader or Screed Man on Asphalt Machine, Asphalt Raker, Grade Checker, Mill Setter, Concrete Specialist, Vibrator Man, Concrete Saw over 5 hp., Laser Beam Man, Barco Tamper, Jackson or any other similar Tamp, Wagon Driller, Churn Drills, Air Track Drills and all other similar Drills, Cutting Torch Man, Form Setters, Liners and Stringline Men on Concrete Paving, curb, Gutters and etc., Hot Mastic Kettleman, Hot Tar Applicator, Hand Blade Operators, Manhole Builders Helpers and Mortar Men on Brick or Block Manholes, Sand Blasting and Gunnite Nozzle Men, Rubbing Concrete, Air Tool Operator in Tunnels, Head Pipe Layer on Sewer work, Manhole Builder (Brick or Block), Dynamite and Powder Men, Welder, Hazardous Waste Work.

LABO1290-007 04/01/2017

JOHNSON AND WYANDOTTE COUNTIES

	Rates	Fringes
Laborers:		
GROUP 1.....	\$ 29.58	15.23
GROUP 2.....	\$ 30.79	15.23

LABORERS CLASSIFICATIONS

GROUP 1: General laborer - Carpenter Tenders, Salamander Tenders, Loading Trucks under bins, Hoppers and Conveyors, Track Men and all other General Laborers, Air Tool Operator, Cement Handler (Bulk or Sack), Chain or Concrete Saw, Deck Hands, Dump Man or earth fill, Georgie Buggies Man, Material Batch Hopper Man, Scale Man, Material Mixer Man, (except on Manholes), Coffor Dams, Abatments and Pier Hole Men working below ground, Riprap Pavers Rock, Black or Brick Signal Man, Scaffolds over ten feet not self supported from ground up, Skipmanor concrete, paving, Wire Mash Setters or concrete paving, Pipelayer on all work in connection with Sewer, Water, Gas.Gasoline, Oil, Drainage Pipe, Conduit Pipe, Tile and Duct Lines and all other pipelines whether pressurized or non-pressurized, regardless of type of material, Power Tool Operator, all work in connection with Hydraulic or General Dredging

Operatons, Form Setter Helpers Pudlers (paving only),
 Crusher Feeder, Men handling creosote ties on creosote
 materials, Men working with and handling epoxy material or
 materials (where special protection is required), Topper of
 Standing Trees, Batter Board Man on Pipe and Ditch work,
 Feeder Man on Wood Pulvarizer Board and Willow Mat Weavers
 and Cable Tiers on River Work, all Laborers working on
 underground tunnels where compressed air is not used.

GROUP 2: Spreader or Screed Man on Asphalt Machine, Asphalt
 Raker, Grade Checker, Mill Setter, Concrete Specialist,
 Vibrator Man, Concrete Saw over 5 hp., Laser Beam Man,
 Barco Tamper, Jackson or any other similar Tamp, Wagon
 Driller, Churn Drills, Air Track Drills and all other
 similar Drills, Cutting Torch Man, Form Setters, Liners and
 Stringline Men on Concrete Paving, curb, Gutters and etc.,
 Hot Mastic Kettleman, Hot Tar Applicator, Hand Blade
 Operators, Manhole Builders Helpers and Mortar Men on Brick
 or Block Manholes, Sand Blasting and Gunnite Nozzle Men,
 Rubbing Concrete, Air Tool Operator in Tunnels, Head Pipe
 Layer on Sewer work, Manhole Builder (Brick or Block),
 Dynamite and Powder Men, Welder, Hazardous Waste Work.

PAIN0003-002 04/01/2017

	Rates	Fringes
Painters:		
Brush & roller.....	\$ 29.34	16.96
Paperhangers.....	\$ 29.84	16.96
Sandblast - base.....	\$ 31.96	16.96
Sandblast: bridge, stage, erected steel, and storage bin and tank.....	\$ 31.96	16.96
Spray storage bin and tanks; Spray elevated tanks; Stageman - spray; Bridge - spray; Steelman - spray.....	\$ 31.96	16.96
Spray.....	\$ 30.46	16.96
Stepplejack - spray or sandblast.....	\$ 35.53	16.96
Stepplejack.....	\$ 35.53	16.96
Storage bin and tanks, elevated takns, stageman, beltman, bridge- man, steelman; elevator shaft.....	\$ 31.96	16.96

12.90

PLAS0518-012 04/01/2017

JOHNSON AND WYANDOTTE COUNTIES

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER....	\$ 31.50	16.77

PLUM0008-005 06/01/2017

	Rates	Fringes
PLUMBER		
Johnson and Wyandotte.....	\$ 43.80	21.14
Miami.....	\$ 43.80	21.14

PLUM0533-002 06/01/2017

	Rates	Fringes
PIPEFITTER.....	\$ 44.48	21.15

SFKS0669-001 04/01/2017

	Rates	Fringes
SPRINKLER FITTER.....	\$ 33.17	15.84

SHEE0002-004 07/01/2012

	Rates	Fringes
Sheet metal worker.....	\$ 38.39	17.73

TEAM0541-004 04/01/2017

	Rates	Fringes
Truck drivers:		
GROUP 1.....	\$ 32.06	14.85
GROUP 2.....	\$ 31.49	14.85
GROUP 3.....	\$ 30.97	14.85

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Mechanics and welders-field; A-frame low boy - boom truck driver.

GROUP 2: Articulated dump truck; insley wagons: dump trucks, excavating, 5 cu. yds. and over, dumpsters, half-tracks, speedace, euclids and similar excavating equipment material trucks; tandem two teams; semi-trailers, winch trucks-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi.; one team; station wagons; pickup truck; material trucks, single axle; tank wagon drivers, single axle

GROUP 3: Oilers, greasers-field

TEAM0541-008 03/25/2000

	Rates	Fringes
Traffic control service driver...	\$ 14.15	2.44+a

a. PAID HOLIDAYS: New Year's Day, Decoration Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day, Employee's

birthday and 2 personal days.

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.
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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

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

 The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

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

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

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted

because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

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

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

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

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

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

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

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

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

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END OF GENERAL DECISION

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

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

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

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

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

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

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

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

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

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

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

b. Trainees (programs of the USDOL).

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

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the 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 any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

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

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

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

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

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

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2015**

REQUIRED ATTENDANCE - PRE-BID CONFERENCE

The Contractor's bid will be declared irregular if the Contractor or an authorized employee of the firm does not attend all pre-bid conferences scheduled for this project.

It will be the Contractor's sole responsibility that the Contractor or an authorized employee of the firm signs the attendance sheet available at the pre-bid conference.

If a Contractor is unable to attend the pre-bid conference for any reason beyond the Contractor's control, notify the Kansas Department of Transportation, Bureau of Construction and Materials (telephone number 785-296-3576) or the District Construction Engineer in which the project is located prior to the pre-bid conference.

If KDOT agrees that the Contractor's reason for not attending is beyond the Contractor's control, the Contractor is excused from attending the scheduled pre-bid conference. However, immediately arrange for another pre-bid meeting with the District Construction Engineer at the District Office to:

- sign the attendance sheet; and
- discuss the minutes of the initial pre-bid conference.

This meeting is mandatory and the Contractor will not be allowed to bid on the project without attending this meeting. The attendance sheet will be posted as part of an Addendum on KDOT's web site: <http://www.ksdot.org/burconsmain/contracts/proposal.asp>.

Prior to the scheduled pre-bid conference, Contractors are encouraged to submit all questions or comments to the District Construction Engineer or the Bureau of Construction and Materials so KDOT can prepare appropriate responses for the conference.

The pre-bid conference is scheduled for this project at:

Time: 9:00 AM

Date: MARCH 7TH 2018

Location: DISTRICT 1 BONNER SPRINGS CONFERENCE ROOM
650 N K-7 HWY
BONNER SPRINGS, KANSAS 66012

07-01-15 C&M (AR)
March-18 Letting

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, EDITION 2015**

COMBINATION, TIED BIDS ON 1R PROJECTS WITH FEDERAL-AID FUNDS

SECTION 102

BIDDING REQUIREMENTS AND CONDITIONS

Page 100-13, subsection 102.5. Delete subsection 102.5a.(2)(f) and replace with the following:

(f) Kansas-funded state projects “tied to” Federal-Aid funded state projects and Kansas-funded state projects “tied with” Federal-Aid funded state projects.

10-10-17 C&M
Oct-17 Letting

**KANSAS DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION TO THE
STANDARD SPECIFICATIONS, 2015 EDITION**

WORK SCHEDULE; SPECIFIED CALENDAR COMPLETION DATES; LIQUIDATED DAMAGES; CLEANUP TIME

I. PROJECT DEFINED; NATURE OF PROJECT

The primary operation on Project No. 70-105 KA 2130-03 is the repairs to the Lewis & Clark Viaduct Bridges 70-105-17.60(173), 70-105-17.40(174), 70-105-17.60(177) and 70-105-17.41(178) in Wyandotte County.

II. NOTICE TO PROCEED; DEFINITIONS

A. The Engineer will issue the notice to proceed no earlier than **MAY 29, 2018** and after all of the following have occurred: the Contract has been executed and the Contractor has participated in the pre-construction conference held by KDOT for the Project.

B. The term “Bridge No. 030” means Bridge 70-105-17.40(030), the existing westbound I-70 Lewis & Clark Viaduct structure, as well as the new bridge to be constructed in its place under Project No. 70-105 KA 2130-02.

C. The term “American Bridge” means American Bridge Company, its officers and its employees and its subcontractors and suppliers at any tier. The contact information for American Bridge is Lanny Miller, PE, Operations Manager, American Bridge Company, 7301 West 129th Street, Suite 130, Overland Park, KS 66213; Phone 913-957-0065.

D. The term “Restricted Activity” means a work operation(s) that restricts American Bridge’s access to Bridge No. 030.

E. The term “Continuously”, as it relates to a Restricted Activity, means the Contractor’s normal workday and does not include Sundays, legal holidays, and days on which weather prevents the Contractor from performing the Restricted Activity.

III. PROJECT NO. 70-105 KA 2130-02 (WESTBOUND I-70 LEWIS & CLARK VIADUCT STRUCTURES) ADJACENT TO PROJECT 70-105 KA 2130-03 PHYSICAL PROJECT LIMITS; COORDINATION AND COOPERATION BETWEEN CONTRACTORS; LIABILITY FOR DELAY DAMAGES

A. On December 12, 2017, the Secretary entered into a contract with American Bridge for the replacement of a portion of the I-70 Westbound Lewis & Clark Viaduct Structures, Bridges 70-105-17.40(030) and 70-105-17.25(173) in Wyandotte County designated as Project No. 70-105 KA 2130-02. The Project limits for Project No. 70-105 KA 2130-02 are adjacent to the Project limits for Project No. 70-105 KA 2130-03, American Bridge has begun work on its Project, and operations on both Project No. 70-105 KA 2130-02 and 70-105 KA 2130-03 will occur concurrently.

B. Under its contract, American Bridge has to replace a portion of Bridge No. 030 and Bridge No. 173 and open these bridges to unrestricted traffic on or before **DECEMBER 20, 2019**. However, American Bridge must use Bridge No. 173 and Bridge No. 178 within the Project No. 70-105 KA 2130-03 Project Limits to transport the labor, equipment, and materials necessary for American Bridge to construct Project No. 70-105 KA 2130-02. American Bridge's contractual liquidated damages for failing to open Bridge No. 030 and Bridge No. 173 timely is Ten thousand dollars (\$10,000.00) per day.

C. As required by Standard Specifications Subsection 105.12 COOPERATION AND CLAIMS BETWEEN CONTRACTORS, the Project No. 70-105 KA 2130-03 Contractor shall cooperate with and coordinate work sequencing with American Bridge. The Project No. 70-105 KA 2130-03 Contractor shall include in its bid all costs (money and time) associated with such cooperation, coordination, the work restrictions provided in this Project Special Provision, and expected delays resulting from American Bridge's work on Project No. 70-105 KA 2130-02.

D. Under Standard Specifications Subsection 105.12, the contractual responsibility for delay damages exists for both American Bridge and the Project No. 70-105 KA 2130-03 Contractor. If either American Bridge or the Project No. 70-105 KA 2130-03 Contractor incurs delay and associated delay damages because of the operations of the other contractor, the Secretary may grant the aggrieved contractor a time extension and/or pay acceleration costs to the aggrieved contractor to overcome part or all of the delay. The aggrieved contractor shall seek recovery against the other contractor rather than the Secretary for delay damages, and the Secretary will seek recovery from the other contractor for any acceleration costs paid to the aggrieved contractor.

IV. WORK RESTRICTIONS BECAUSE OF PROJECT NO. 70-105 KA 2130-02 OPERATIONS; LIQUIDATED DAMAGES; LIABILITY FOR DELAY DAMAGES AND ACCELERATION COSTS

A. Bridge No. 030 Access. For the duration of the Project, the Contactor shall provide American Bridge access (reverse flow) to Bridge No. 030 from either Bridge No. 173 or Bridge No. 178. Thus, the Contractor shall not perform work on Bridge No. 173 that restricts American Bridge's access to Bridge 030 at the same time the Contractor performs work on Bridge No. 178 that restricts American Bridge's access to Bridge No. 030. The Contractor shall not perform work on Bridge No. 178 that restricts American Bridge's access to Bridge No. 030 at the same time the Contractor performs work on Bridge No. 173 that restricts access to Bridge No. 030.

B. Liquidated Damages - Bridge No. 030 Access. If the Contractor's operations prevent American Bridge from having access to Bridge No. 030 from either Bridge No. 173 or Bridge 178 at all times, the Contractor shall be liable for liquidated damages. Excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **Ten thousand dollars (\$10,000.00)** per day for each calendar day, or part thereof that American Bridge does not have access to Bridge No. 030 from either Bridge No. 173 or Bridge No. 178.

C. Restricted Activities.

1. Bridge No. 173. For each Restricted Activity on Bridge No. 173, once begun, the Contractor shall perform that Restricted Activity Continuously until that Activity is completed and American Bridge's access to Bridge No. 030 from Bridge No. 173 has been restored. The obligation to pursue a Restricted Activity Continuously applies even if American Bridge has access to Bridge No. 030 from Bridge No. 178.
2. Bridge No. 178. For each Restricted Activity on Bridge No. 178, once begun, the Contractor shall perform that Restricted Activity Continuously until that Activity is completed and American Bridge's access to Bridge No. 030 from Bridge No. 178 has been restored. The obligation to pursue a Restricted Activity Continuously applies even if American Bridge has access to Bridge No. 030 from Bridge No. 173.

D. Liquidated Damages - Restricted Activities. If the Contractor's operations on a Restricted Activity is not performed Continuously on Bridge No. 173 and/or Bridge No. 178 as provided in Subsection IV.C.1 and IV.C.2, the Contractor shall be liable for liquidated damages. For each Bridge and excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **two thousand dollars (\$2,000.00)** per day for each calendar day, or part thereof that the Contractor has not resumed work on the Restricting Activity for that Bridge.

E. The Engineer may charge damages under both Subsection IV.B for failure to furnish access to Bridge No. 030 and Subsection IV.D for failure to perform a Restricted Activity Continuously; however, if damages are assessed on the same day, the Engineer will not withhold more than **\$10,000.00** on that day.

F. Acceleration Costs. Because the need to have Westbound I-70 open to unrestricted traffic by December 20, 2019 is critical, if the Project No. 70-105 KA 2130-03 Contractor fails to provide American Bridge access to Bridge No. 030 as required in Section IV.A and American Bridge incurs delay and/or delay damages because of this lack of access, the Secretary anticipates paying American Bridge acceleration costs to overcome the delay and meet the December 20, 2019 completion date. As provided in Standard Specifications Subsection 105.12, the Secretary will recover these acceleration costs from the Project No. 70-105 KA 2130-03 Contractor. The payment of such acceleration costs does not relieve the Project No. 70-105 KA 2130-03 Contractor of liquidated damages assessed by the Secretary under this Section IV and other delay damages incurred by American Bridge because of the Contractor's failure to comply with the work restrictions in this Section IV.

G. A Contractor's liability for or recovery of delay damages and/or acceleration costs as noted in Section III, Section IV, and/or Standard Specifications Subsection 105.12 is in addition to or separate from the liquidated damages that the Secretary may assess against a Contractor under Section IV for failure to furnish access to Bridge No. 030 and failure to perform a Restricted Activity Continuously and under Section V and Section VI for failure complete the specified work timely.

V. CALENDAR COMPLETION DATE OF OCTOBER 11, 2019 FOR COMPLETION OF ALL WORK NECESSARY TO OPEN THE PROJECT TO UNRESTRICTED TRAFFIC; LIQUIDATED DAMAGES

A. On or before **OCTOBER 11, 2019**, the Contractor shall complete all work necessary to open the Project to unrestricted traffic as the Contract Documents require.

B. Liquidated Damages. If the Contractor fails to complete all work necessary to open the Project to unrestricted traffic on or before **OCTOBER 11, 2019**, the Contractor shall be liable for liquidated damages. Excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **two thousand dollars (\$2,000.00)** per day for each calendar day, or part thereof that the Project is not open to unrestricted traffic after **OCTOBER 11, 2019**.

C. The Engineer may charge damages under both Section V.B and Section VI.B for failure to complete the work timely as required; however, if damages are assessed on the same day, the Engineer will not withhold more than **\$2,000.00** on that day.

D. The Engineer may charge liquidated damages under both Section IV for failure to comply with the work restrictions and under Section V.B for failing to complete the work timely as required. If the Engineer charges damages under Section IV on the same day that the Engineer charges damages under Section V.B, the Engineer will withhold the applicable amount under Section IV (**\$10,000.00** or **\$2,000.00**) in addition to the **\$2,000.00** under Section V.B.

VI. CALENDAR COMPLETION DATE OF NOVEMBER 8, 2019 FOR COMPLETION OF ALL WORK INCLUDING CLEANUP; LIQUIDATED DAMAGES

A. **Subsection 108.4c** of the Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2015 Ed.) (Standard Specifications) does not apply to this Contract. Instead, the Contractor shall complete the remaining, unfinished Contract pay items, subsidiary items, incidental work, final cleanup, and final punch list on or before **NOVEMBER 8, 2019**.

B. Liquidated Damages. If all remaining, unfinished Contract pay items, subsidiary items, incidental work, final cleanup, and final punch list is not completed on or before **NOVEMBER 8, 2019**, the Contractor shall be liable for liquidated damages. Excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **one thousand dollars (\$1,000.00)** per day for each calendar day, or part thereof that the work specified in Section VI.A remains incomplete.

C. The liquidated damages charged under Section VI.B are in addition to the liquidated damages that may be charged under Section IV and Section V.B. However, if damages are assessed under Section V.B on the same day as damages under Section VI.B, the Engineer will not withhold more than **\$2,000.00** on that day. If damages are assessed under Section IV on the same day as damages under Section VI.B, the Engineer will withhold the applicable amount under Section IV (**\$10,000.00** or **\$2,000.00**) in addition to the **\$1,000.00** under Section VI.B.

D. Liquidated Damages when Project is not open to unrestricted traffic. If at any time after **OCTOBER 11, 2019**, the Contractor obstructs the unrestricted traffic flow in order to perform any work, the Contractor shall be liable for liquidated damages under Section V.B. Excluding Sundays and legal Holidays, the liquidated damages charged and owing shall be **two thousand dollars (\$2,000.00)** per day for each calendar day, or part thereof, that the Project is not open to unrestricted traffic after **OCTOBER 11, 2019**.

02-16-18 C&M (CB)

UNION PACIFIC RAILROAD COMPANY
RIGHT OF ENTRY AGREEMENT, INSURANCE AND FLAGGING

PROJECT: 70-105 KA 2130-03

PROJECT SCOPE: BRIDGE REPAIR

DOT 429465B, 429467P and 429487B
MP 286.34, 286.37 KC METRO FALLS CITY SUBDIVISION
MP 10.583 KCT SUBDIVISION

KANSAS CITY, WYANDOTTE COUNTY, KS.

I. PURPOSE OF PROJECT SPECIAL PROVISION

- A. This Project Special Provision requires the Contractor to execute the attached Right of Entry Agreement with Union Pacific Railroad (UPRR) before the Contractor may enter upon any Railroad right-of-way to perform work on the above Project.
- B. This Project Special Provision modifies the insurance requirements of the Kansas Department of Transportation's Standard Specifications for State Road and Bridge Construction (2015 Edition) as required by the Right of Entry Agreement and modifies the Right of Entry Agreement.

II. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

- A. The Contractor's Right of Entry Agreement is attached to this Project Special Provision and incorporated in the contract for the above Project.
- B. The Right of Entry Agreement, includes without limitation, contract obligations for commercial general liability insurance, railroad protective liability insurance, flagging, and safety requirements.
- C. The Contractor shall not terminate the Right of Entry Agreement as permitted in Article 6 without first obtaining the Secretary's permission to terminate the Right of Entry Agreement.
- D. UPRR may enforce any and all rights given to UPRR in the Right of Entry Agreement.

III. INSURANCE

- A. The Contractor shall obtain all insurances required in Exhibit C of the Contractor's Right of Entry Agreement, in the Forms and with the endorsements specified, including without limitation the endorsement that amends the definition of insured contract to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- B. For the benefit of the Contractor and the Insurance Companies in the determination of a premium for the RPL to be carried for and in behalf of the UPRR, the approximate ratio of the estimated contract cost of construction to be performed on, over or under the insured railroad's property or within fifty (50) feet of the insured railroad's tracks on which railroad trains run, to the total contract cost is 1%.

C. The Contractor shall directly provide to UPRR copies of all insurance binders, policies, certificates and endorsements, not just Railroad Protective Liability Insurance, as specified in Article 7 of the Contractor's Right of Entry Agreement.

D. For tracking purposes, the Contractor shall notify the KDOT's Field Engineer by an email of the date the Right of Entry Agreement and the Railroad Protective Liability Policy are submitted to UPRR.

E. The Contractor shall also provide a copy of the Railroad Protective Liability Policy to K.D.O.T. Bureau of Construction & Materials, Plans and Proposal Section, 700 S.W. Harrison, 7th Floor, Topeka, Kansas 66603.

IV. SAFETY

The Contractor shall comply with all Safety Requirements set forth in the Right of Entry Agreement (Section 7 of Exhibit B and in Exhibit D).

V. FLAGGING

A. The Contractor shall refer to the "UNION PACIFIC RAILROAD COMPANY FLAGGING REQUIREMENTS" which details information relative to rates of pay, train traffic and speeds in the area of the project.

B. The Exhibit B of the Right of Entry Agreement has additional flagging requirements.

01-26-18 C&M (AR)

**UNION PACIFIC RAILROAD COMPANY
FLAGGING REQUIREMENTS**

State: Kansas **Agency:** KDOT

Description/Location: Project No. 70-105 KA-2130-03
Repair Bridges 173,174,177 and 178
I-70 WB Lewis and Clark various ramp structures
DOT 429465B, 429467P and 429487B
MP 286.34, 286.37 KC Metro Falls City Subdivision
MP 10.583 KCT Subdivision
Kansas City, Wyandotte County, KS

This is to advise the Railroad's requirements for flagging (labor, transportation and equipment costs) in connection with the project, which may be necessary with respect to work to be done by the State's Contractor are as follows:

1. The service of an Assistant Track Foreman, or other railroad employee qualified to protect the Railroad's operation in accordance with the Railroad's rules, will be required if, generally, but not limited to:

- (a) Any of State's Contractor's personnel or equipment will be working within twenty-five (25) feet horizontally of centerline of any track.
- (b) Any State's Contractor's personnel or equipment will be working or operating any distance vertically, above or below track, within twenty-five (25) feet horizontal distance from the centerline of any track.
- (c) Any materials and/or any of State's Contractor's equipment or personnel, including vehicles requiring special permit to operate on public roadways, is moved across any track, except, when licensed vehicles which do not require special permit are utilizing the crossing of a public roadway.

If, in the opinion of Railroad's Superintendent, or his authorized representative, any construction operations involving interference with the Railroad's track or traffic, the fouling of Railroad's operating clearances, or reasonable probability of accidental hazard to Railroad's operations or personnel, the services of one or more qualified Railroad personnel will be required.

2. Arrangements for flagging are to be made with Railroad's Manager of Track Maintenance, Mr. Jarrod Laramore whose office is located at Kansas City, KS, Telephone (816) 401 – 8895.

- (a) For projects requiring a minimal amount of flagging service, two (2) days or less, arrangements are to be made at least seventy-two (72) hours in advance of commencing work on Railroad's property. Minimal flagging service may only be utilized once within a 30 day period.
- (b) For projects requiring flagging services of two (2) or more days, arrangements are to be made 30 days in advance of commencing work on Railroad's property.

3. Currently there are approximately 22 trains per day average operating at a maximum timetable speed of 30 mph. Details regarding train operations required or desired by the State's Contractor, may be obtained from Railroad's Superintendent, Ms. Kelli Dunn, whose telephone number is (816) 399-1600.

4. The rate of pay per hour for each man will be prevailing hourly rate in effect for an eight (8) hour day for the class of men used during regularly assigned hours, and overtime in accordance with Labor Agreements and Schedules in effect at the time work is performed.

(a) The current hourly rate or pay for Track Foreman during regularly assigned hours are \$29.56.

(b) One and one-half current hourly rate is paid for overtime, Saturdays and Sundays two and one-half times current hourly rate for holidays.

In addition to the cost of such labor, a composite charge of 190.39% for vacation, holiday, health & welfare, supplemental sickness, RRR & UC, supplemental pension, Employee Liability & Property Damage and Administration will be included, computed on actual payroll.

A Maximum of one (1) hour travel time each way per day per man will be required for travel to and from the project.

Wage rate are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rates or additional charges are changed, the contractor will be billed on the basis of the new rates and charges.

5. Transportation of flagman and/or communication equipment use by flagman will be charged at the current rate. The current rate for a vehicle and radio is \$5.00 per hour.

6. Contractor is obligated to reimburse Railroad for flagging services, including transportation and equipment. Monthly bill will be submitted.

7. Reimbursement to Railroad will be required covering the full eight hour day during which any flagman and/or equipment is furnished, unless, under provisions of Item 2 (a) only of these requirements, he can be assigned to other railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which he has engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which Railroad is required to pay flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Contractor may not be working during such time.

Flagging Requirements

November 30, 2017

Page 2

CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

{FOR USE WITH KANSAS DOT PROJECTS}

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20_____,
by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Railroad"); and
\ _____,
a _____ corporation ("Contractor").

RECITALS:

Contractor has contracted with the SECRETARY OF TRANSPORTATION OF THE STATE OF KANSAS ON BEHALF OF THE KANSAS DEPARTMENT OF TRANSPORTATION ("KDOT") to perform work relating to KDOT Project No. 70-105 KA-2130-03 (the "work"), with all or a portion of such work to be performed on property of Railroad in the vicinity of USDOT# 429465B Railroad's Milepost 286.34 and USDOT# 429467P Railroad's Milepost 286.37 on Railroad's KC Metro Falls City Subdivision and USDOT# 429487B Milepost 10.583 on Railroad's KCT Subdivision in Wyandotte County, Kansas, as such location is in the general location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, work is the subject of a contract between Railroad and KDOT.

Railroad is willing to permit Contractor to perform the work described above at the location described above subject to the terms and conditions contained in this Agreement

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between Railroad and Contractor, as follows:

ARTICLE 1 - DEFINITION OF CONTRACTOR.

For purposes of this Agreement, all references in this agreement to Contractor shall include Contractor's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

ARTICLE 2 - RIGHT GRANTED; PURPOSE.

Railroad hereby grants to Contractor the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the property described in the Recitals for the purpose of performing the work described in the Recitals above. The right herein granted to Contractor is limited to those portions of Railroad's property specifically described herein, or as designated by the Railroad Representative named in Article 4.

ARTICLE 3 - TERMS AND CONDITIONS CONTAINED IN EXHIBITS B, C AND D.

The terms and conditions contained in **Exhibit B**, **Exhibit C** and **Exhibit D**, attached hereto, are hereby made a part of this Agreement.

ARTICLE 4 - ALL EXPENSES TO BE BORNE BY CONTRACTOR; RAILROAD REPRESENTATIVE.

A. Contractor shall bear any and all costs and expenses associated with any work performed by Contractor, or any costs or expenses incurred by Railroad relating to this Agreement.

B. Contractor shall coordinate all of its work with the following Railroad representative or his or her duly authorized representative (the "Railroad Representative"):

Mr. Jarrod Laramore
Manager of Track Maintenance
Union Pacific Railroad
Kansas City, Kansas
(816)401-8895

C. Contractor, at its own expense, shall adequately police and supervise all work to be performed by Contractor and shall ensure that such work is performed in a safe manner as set forth in Section 7 of **Exhibit B**. The responsibility of Contractor for safe conduct and adequate policing and supervision of Contractor's work shall not be lessened or otherwise affected by Railroad's approval of plans and specifications involving the work, or by Railroad's collaboration in performance of any work, or by the presence at the work site of a Railroad Representative, or by compliance by Contractor with any requests or recommendations made by Railroad Representative.

ARTICLE 5- SCHEDULE OF WORK ON A MONTHLY BASIS.

The Contractor, at its expense, shall provide on a monthly basis a detailed schedule of work to the Railroad Representative named in Article 4B above. The reports shall start at the execution of this Agreement and continue until this Agreement is terminated as provided in this Agreement or until the Contractor has completed all work on Railroad's property.

ARTICLE 6 - TERM; TERMINATION.

A. The grant of right herein made to Contractor shall commence on the date of this Agreement, and continue until [REDACTED], unless sooner terminated as herein provided, or at such time as Contractor has completed its work on Railroad's property, whichever is earlier. Contractor agrees to notify the Railroad Representative in writing when it has completed its work on Railroad's property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

ARTICLE 7 - CERTIFICATE OF INSURANCE.

A. Before commencing any work, Contractor will provide Railroad with the (i) insurance binders, policies, certificates and endorsements set forth in **Exhibit C** of this Agreement, and (ii) the insurance endorsements obtained by each subcontractor as required under Section 12 of **Exhibit B** of this Agreement.

B. All insurance correspondence, binders, policies, certificates and endorsements shall be sent to:

Union Pacific Railroad Company
Real Estate Department, MS 1690,
1400 Douglas Street, MS 1690
Omaha, NE 68179-1690
Attn: Senior Manager Contracts
UPRR Folder No.: [REDACTED]

ARTICLE 8 - DISMISSAL OF CONTRACTOR'S EMPLOYEE.

At the request of Railroad, Contractor shall remove from Railroad's property any employee of Contractor who fails to conform to the instructions of the Railroad Representative in connection with the work on Railroad's property, and any right of Contractor shall be suspended until such removal has occurred. Contractor shall indemnify Railroad against any claims arising from the removal of any such employee from Railroad's property.

ARTICLE 9 - ADMINISTRATIVE FEE.

Upon the execution and delivery of this Agreement, Contractor shall pay to Railroad Five hundred dollars (\$500.00) as reimbursement for clerical, administrative and handling expenses in connection with the processing of this Agreement.

ARTICLE 10 - CROSSINGS.

A. No additional vehicular crossings (including temporary haul roads) or pedestrian crossings over Railroad's trackage shall be installed or used by Contractor without the prior written permission of Railroad.

B. Any permanent or temporary changes, including temporary traffic control, to crossings must conform to the Manual of Uniform Traffic Control Devices (MUTCD) and any applicable Federal Railroad Administration rules, regulations and guidelines, and must be reviewed by the Railroad prior to any changes being implemented. In the event the Railroad is found to be out of compliance with federal safety regulations due to the Contractor's modifications, negligence, or any other reason arising from the Contractor's presence on the Railroad's property, the Contractor agrees to assume liability for any civil penalties imposed upon the Railroad for such noncompliance.

ARTICLE 11- EXPLOSIVES.

Explosives or other highly flammable substances shall not be stored on Railroad's property without the prior written approval of Railroad.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

By: _____

Title: _____

✓ _____

By: _____

Title: _____

EXHIBIT A
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

For the Railroad location map contact the Union Pacific Railroad.

EXHIBIT B
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

Section 1. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.

A. Contractor agrees to notify the Railroad Representative at least thirty (30) working days in advance of Contractor commencing its work and at least ten (10) working days in advance of proposed performance of any work by Contractor in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such ten (10) day notice, the Railroad Representative will determine and inform Contractor whether a flagman need be present and whether Contractor needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Contractor for such expenses incurred by Railroad, unless Railroad and a federal, state or local governmental entity have agreed that Railroad is to bill such expenses to the federal, state or local governmental entity. If Railroad will be sending the bills to Contractor, Contractor shall pay such bills within thirty (30) days of Contractor's receipt of billing. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Contractor agrees that Contractor is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Contractor may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Contractor must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

Section 2. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED

A. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by Railroad without liability to Contractor or to any other party for compensation or damages.

B. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of Railroad's property, and others) and the right of Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3. NO INTERFERENCE WITH OPERATIONS OF RAILROAD AND ITS TENANTS.

A. Contractor shall conduct its operations so as not to interfere with the continuous and uninterrupted use and operation of the railroad tracks and property of Railroad, including without limitation, the operations of Railroad's lessees, licensees or others, unless specifically authorized in advance by the Railroad Representative. Nothing shall be done or permitted to be done by Contractor at any time that would in any manner impair the safety of such operations. When not in use, Contractor's machinery and materials shall be kept at least fifty (50) feet from the centerline of Railroad's nearest track, and there shall be no vehicular crossings of Railroads tracks except at existing open public crossings.

B. Operations of Railroad and work performed by Railroad personnel and delays in the work to be performed by Contractor caused by such railroad operations and work are expected by Contractor, and Contractor agrees that Railroad shall have no liability to Contractor, or any other person or entity for any such delays. The Contractor shall coordinate its activities with those of Railroad and third parties so as to avoid interference with railroad operations. The safe operation of Railroad train movements and other activities by Railroad takes precedence over any work to be performed by Contractor.

Section 4. LIENS.

Contractor shall pay in full all persons who perform labor or provide materials for the work to be performed by Contractor. Contractor shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be created or enforced against any property of Railroad for any such work performed. Contractor shall indemnify and hold harmless Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished. If Contractor fails to promptly cause any lien to be released of record, Railroad may, at its election, discharge the lien or claim of lien at Contractor's expense.

Section 5. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

A. Fiber optic cable systems may be buried on Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Contractor shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on Railroad's property to be used by Contractor. If it is, Contractor will telephone the telecommunications company(ies) involved, make arrangements for a cable locator and, if applicable, for relocation or other protection of the fiber optic cable. Contractor shall not commence any work until all such protection or relocation (if applicable) has been accomplished.

b. In addition to other indemnity provisions in this Agreement, Contractor shall indemnify, defend and hold Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of Contractor, its agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and/or (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Contractor shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 6. PERMITS - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, Contractor shall secure any and all necessary permits and shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work including, without limitation, all applicable Federal Railroad Administration regulations.

Section 7. SAFETY.

A. Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work performed by Contractor. Contractor shall be responsible for initiating, maintaining and supervising all safety, operations and programs in connection with the work. Contractor shall at a minimum comply with Railroad's safety standards listed in **Exhibit D**, hereto attached, to ensure uniformity with the safety standards followed by Railroad's own forces. As a part of Contractor's safety responsibilities, Contractor shall notify Railroad if Contractor determines that any of Railroad's safety standards are contrary to good safety practices. Contractor shall furnish copies of **Exhibit D** to each of its employees before they enter the job site.

B. Without limitation of the provisions of paragraph A above, Contractor shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job.

C. Contractor shall have proper first aid supplies available on the job site so that prompt first aid services may be provided to any person injured on the job site. Contractor shall promptly notify Railroad of any U.S. Occupational Safety and Health Administration reportable injuries. Contractor shall have a nondelegable duty to control its employees while they are on the job site or any other property of Railroad, and to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage, drug or other substance that may inhibit the safe performance of any work.

D. If and when requested by Railroad, Contractor shall deliver to Railroad a copy of Contractor's safety plan for conducting the work (the "Safety Plan"). Railroad shall have the right, but not the obligation, to require Contractor to correct any deficiencies in the Safety Plan. The terms of this Agreement shall control if there are any inconsistencies between this Agreement and the Safety Plan.

Section 8. INDEMNITY.

A. To the extent not prohibited by applicable statute, Contractor shall indemnify, defend and hold harmless Railroad, its affiliates, and its and their officers, agents and employees (individually an "Indemnified Party" or collectively "Indemnified Parties") from and against any and all loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorney's, consultant's and expert's fees, and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, any Indemnified Party, Contractor, or any employee of Contractor or of any Indemnified Party) arising out of or in any manner connected with (i) any work performed by Contractor, or (ii) any act or omission of Contractor, its officers, agents or employees, or (iii) any breach of this Agreement by Contractor.

b. The right to indemnity under this Section 8 shall accrue upon occurrence of the event giving rise to the Loss, and shall apply regardless of any negligence or strict liability of any Indemnified Party, except where the Loss is caused by the sole active negligence of an Indemnified Party as established by the final judgment of a court of competent jurisdiction. The sole active negligence of any Indemnified Party shall not bar the recovery of any other Indemnified Party.

c. Contractor expressly and specifically assumes potential liability under this Section 8 for claims or actions brought by Contractor's own employees. Contractor waives any immunity it may have under worker's compensation or industrial insurance acts to indemnify the Indemnified Parties under this Section 8. Contractor acknowledges that this waiver was mutually negotiated by the parties hereto.

d. No court or jury findings in any employee's suit pursuant to any worker's compensation act or the Federal Employers' Liability Act against a party to this Agreement may be relied upon or used by Contractor in any attempt to assert

liability against any Indemnified Party.

e. The provisions of this Section 8 shall survive the completion of any work performed by Contractor or the termination or expiration of this Agreement. In no event shall this Section 8 or any other provision of this Agreement be deemed to limit any liability Contractor may have to any Indemnified Party by statute or under common law.

Section 9. RESTORATION OF PROPERTY.

In the event Railroad authorizes Contractor to take down any fence of Railroad or in any manner move or disturb any of the other property of Railroad in connection with the work to be performed by Contractor, then in that event Contractor shall, as soon as possible and at Contractor's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed. Contractor shall remove all of Contractor's tools, equipment, rubbish and other materials from Railroad's property promptly upon completion of the work, restoring Railroad's property to the same state and condition as when Contractor entered thereon.

Section 10. WAIVER OF DEFAULT.

Waiver by Railroad of any breach or default of any condition, covenant or agreement herein contained to be kept, observed and performed by Contractor shall in no way impair the right of Railroad to avail itself of any remedy for any subsequent breach or default.

Section 11. MODIFICATION - ENTIRE AGREEMENT.

No modification of this Agreement shall be effective unless made in writing and signed by Contractor and Railroad. This Agreement and the exhibits attached hereto and made a part hereof constitute the entire understanding between Contractor and Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work to be performed by Contractor.

Section 12. ASSIGNMENT - SUBCONTRACTING.

Contractor shall not assign or subcontract this Agreement, or any interest therein, without the written consent of the Railroad. Contractor shall be responsible for the acts and omissions of all subcontractors. Before Contractor commences any work, the Contractor shall, except to the extent prohibited by law; (1) require each of its subcontractors to include the Contractor as "Additional Insured" in the subcontractor's Commercial General Liability policy and Business Automobile policies with respect to all liabilities arising out of the subcontractor's performance of work on behalf of the Contractor by endorsing these policies with ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage); (2) require each of its subcontractors to endorse their Commercial General Liability Policy with "Contractual Liability Railroads" ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) for the job site; and (3) require each of its subcontractors to endorse their Business Automobile Policy with "Coverage For Certain Operations In Connection With Railroads" ISO Form CA 20 70 10 01 (or a substitute form providing equivalent coverage) for the job site.

EXHIBIT C
TO
CONTRACTOR'S
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad Company
Insurance Provisions For
Contractor's Right of Entry Agreement

Contractor shall, at its sole cost and expense, procure and maintain during the course of the Project and until all Project work on Railroad's property has been completed and the Contractor has removed all equipment and materials from Railroad's property and has cleaned and restored Railroad's property to Railroad's satisfaction, the following insurance coverage:

- A. Commercial General Liability insurance.** Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. Business Automobile Coverage insurance.** Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. Workers' Compensation and Employers' Liability insurance.** Coverage must include but not be limited to:

- Contractor's statutory liability under the workers' compensation laws of the State of Kansas.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Contractor is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy must contain the following endorsement, which must be stated on the certificate of insurance:

- Alternate Employer endorsement ISO form WC 00 03 01 A (or a substitute form providing equivalent coverage) showing Railroad in the schedule as the alternate employer (or a substitute form providing equivalent coverage).

- D. Railroad Protective Liability insurance.** Contractor must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this Agreement and shall describe all WORK or OPERATIONS performed under this agreement. Contractor shall provide this Agreement to Contractor's insurance agent(s) and/or broker(s) and Contractor shall instruct such agent(s) and/or

broker(s) to procure the insurance coverage required by this Agreement. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

- E. **Umbrella or Excess** insurance. The Umbrella policies must "follow form" and afford no less coverage than the primary policy.
- F. **Pollution Liability** insurance. Pollution liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Contractors CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Contractor must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

- G. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Contractor's liability under the indemnity provisions of this Agreement.
- H. Intentionally omitted.
- I. Contractor waives all rights of recovery, and its insurers also waive all right of subrogation of damages against Railroad and its agents, officers, directors and employees covered by the workers compensation and employers liability obtained by Contractor required by this Agreement, where permitted by law. This waiver must be stated on the certificate of insurance.
- J. Prior to commencing the work, Contractor shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.
- K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L. The fact that insurance is obtained by Contractor or by Railroad on behalf of Contractor will not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Contractor or any third party will not be limited by the amount of the required insurance coverage.

EXHIBIT D
TO
CONTRACTOR'S RIGHT OF ENTRY AGREEMENT

MINIMUM SAFETY REQUIREMENTS

The term "employees" as used herein refer to all employees of Contractor as well as all employees of any subcontractor or agent of Contractor.

I. Clothing

- A. All employees of Contractor will be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing, or free use of their hands or feet.

Specifically, Contractor's employees must wear:

- (i) Waist-length shirts with sleeves.
 - (ii) Trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching.
 - (iii) Footwear that covers their ankles and has a defined heel. Employees working on bridges are required to wear safety-toed footwear that conforms to the American National Standards Institute (ANSI) and FRA footwear requirements.
- B. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal.
- C. Employees must not wear loose or ragged clothing, neckties, finger rings, or other loose jewelry while operating or working on machinery.

II. Personal Protective Equipment

Contractor shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations, or recommended or requested by the Railroad Representative.

- (i) Hard hat that meets the American National Standard (ANSI) Z89.1 – latest revision. Hard hats should be affixed with Contractor's company logo or name.
- (ii) Eye protection that meets American National Standard (ANSI) for occupational and educational eye and face protection, Z87.1 – latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, etc.
- (iii) Hearing protection, which affords enough attenuation to give protection from noise levels that will be occurring on the job site. Hearing protection, in the form of plugs or muffs, must be worn when employees are within:
 - 100 feet of a locomotive or roadway/work equipment
 - 15 feet of power operated tools
 - 150 feet of jet blowers or pile drivers
 - 150 feet of retarders in use (when within 10 feet, employees must wear dual ear protection – plugs and muffs)
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- (iv) Other types of personal protective equipment, such as respirators, fall protection equipment, and face shields, must be worn as recommended or requested by the Railroad Representative.

III. On Track Safety

Contractor is responsible for compliance with the Federal Railroad Administration's Roadway Worker Protection regulations – 49CFR214, Subpart C and Railroad's On-Track Safety rules. Under 49CFR214, Subpart C, railroad contractors are responsible for the training of their employees on such regulations. In addition to the instructions contained in Roadway Worker Protection regulations, all employees must:

- (i) Maintain a distance of twenty-five (25) feet to any track unless the Railroad Representative is present to authorize movements.
- (ii) Wear an orange, reflectorized workwear approved by the Railroad Representative.
- (iii) Participate in a job briefing that will specify the type of On-Track Safety for the type of work being performed. Contractor must take special note of limits of track authority, which tracks may or may not be fouled, and clearing the track. Contractor will also receive special instructions relating to the work zone around machines and minimum distances between machines while working or traveling.

IV. Equipment

- A. It is the responsibility of Contractor to ensure that all equipment is in a safe condition to operate. If, in the opinion of the Railroad Representative, any of Contractor's equipment is unsafe for use, Contractor shall remove such equipment from Railroad's property. In addition, Contractor must ensure that the operators of all equipment are properly trained and competent in the safe operation of the equipment. In addition, operators must be:
 - Familiar and comply with Railroad's rules on lockout/tagout of equipment.
 - Trained in and comply with the applicable operating rules if operating any hy-rail equipment on-track.
 - Trained in and comply with the applicable air brake rules if operating any equipment that moves rail cars or any other railbound equipment.
- B. All self-propelled equipment must be equipped with a first-aid kit, fire extinguisher, and audible back-up warning device.
- C. Unless otherwise authorized by the Railroad Representative, all equipment must be parked a minimum of twenty-five (25) feet from any track. Before leaving any equipment unattended, the operator must stop the engine and properly secure the equipment against movement.
- D. Cranes must be equipped with three orange cones that will be used to mark the working area of the crane and the minimum clearances to overhead powerlines.

V. General Safety Requirements

- A. Contractor shall ensure that all waste is properly disposed of in accordance with applicable federal and state regulations.
- B. Contractor shall ensure that all employees participate in and comply with a job briefing conducted by the Railroad Representative, if applicable. During this briefing, the Railroad Representative will specify safe work procedures, (including On-Track Safety) and the potential hazards of the job. If any employee has any questions or concerns about the work, the employee must voice them during the job briefing. Additional job briefings will be conducted during the work as conditions, work procedures, or personnel change.
- C. All track work performed by Contractor meets the minimum safety requirements established by the Federal Railroad Administration's Track Safety Standards 49CFR213.

- D. All employees comply with the following safety procedures when working around any railroad track:
- (i) Always be on the alert for moving equipment. Employees must always expect movement on any track, at any time, in either direction.
 - (ii) Do not step or walk on the top of the rail, frog, switches, guard rails, or other track components.
 - (iii) In passing around the ends of standing cars, engines, roadway machines or work equipment, leave at least 20 feet between yourself and the end of the equipment. Do not go between pieces of equipment if the opening is less than one car length (50 feet).
 - (iv) Avoid walking or standing on a track unless so authorized by the employee in charge.
 - (v) Before stepping over or crossing tracks, look in both directions first.
 - (vi) Do not sit on, lie under, or cross between cars except as required in the performance of your duties and only when track and equipment have been protected against movement.
- E. All employees must comply with all federal and state regulations concerning workplace safety.