

**CONSTRUCTION SUBCONTRACT**

This agreement (the “**Subcontract**”) is effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by and between **Flatiron/Dragados, LLC** hereinafter referred to as the “**Contractor**” and \_\_\_\_\_ hereinafter referred to as the “**Subcontractor**.”

**WITNESSETH:** The following terms and conditions are hereby mutually agreed to by and between the Contractor and the Subcontractor (collectively, the “**Parties**”):

**ARTICLE 1**  
**PROJECT INFORMATION AND DEFINITIONS**

**PROJECT:** US 181 Harbor Bridge Replacement Project

**CONTRACTOR:** Flatiron/Dragados, LLC, a limited liability company incorporated under the laws of Delaware and having a place of business at 500 N. Shoreline Boulevard, Suite 500, Corpus Christi, Texas.

**SUBCONTRACTOR:** [●], a [corporation] incorporated under the laws of [●] and having a place of business at [●]

**OWNER:** Texas Department of Transportation

**CONTRACT:** The Contractor has made a contract with the Owner entitled Comprehensive Development Agreement US 181 Harbor Bridge Replacement Project, dated September 28, 2015 (“**Contract**”) to develop, design, construct and maintain the Project.

**SUBCONTRACT WORK:** [Brief description to be completed by Project team]

**INVOICING DATE:** [To be completed by Project team]

**RETAINAGE:** [10%] of Subcontract Price [amount to be completed by Project team before Subcontract is sent to Subcontractor]

**ARTICLE 2**  
**SUBCONTRACT PRICE**

**2.1** As full compensation for performance of the Subcontract, Contractor agrees to pay Subcontractor in current U.S. funds the Subcontract Price for the performance of the Subcontract Work, in the manner described herein, subject to all applicable provisions of the Subcontract.

(a) Subcontract Price is broken down into its costs as reflected in the Subcontract Price Schedule, which is attached hereto as **Exhibit A – “Subcontractor Price Schedule”**.

**2.2 PRICING DOCUMENTS.** Subcontractor shall submit to the Contractor a copy of all documentary information used in determining the Subcontract Price (including the price for Subcontract Work included in any Change Order), immediately prior to executing the Subcontract and each Change Order, to be held in locked fireproof cabinet(s) supplied by the Contractor and located in the Owner’s project office with the key held only by the Contractor and which shall be accessible by the Owner, the Contractor and Dispute resolvers, on terms substantially similar to those contained herein. The Subcontractor represents and warrants, for the benefit of the Contractor and the Owner, that its submission in the information the Contractor delivered to the Owner one copy of all cost, unit pricing, price quote and other documentary information used in preparation of the Price (“**EPDs**”), constitutes all the documentary information used in establishing its Subcontract Price, and agrees to provide a sworn certification in favor of the Contractor and the Owner together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate, and current. The Subcontractor shall preserve all documentary information used in establishing its Subcontract Price and to provide such documentation to the Contractor and/or the Owner in connection with any Claim made by the Subcontractor.

**ARTICLE 3**  
**SUBCONTRACT DOCUMENTS**

**3.1** The Subcontract Documents consist of this Subcontract and the following listed documents, schedules, and attachments, which are all incorporated by reference and made a part hereof:

*Exhibits*

Exhibit A	Subcontractor Price Schedule
Exhibit B	Scope of Work
Exhibit C	Schedule of Work
Exhibit D	Contractor Controlled Insurance Program (CCIP) and Sample Insurance Certificate (COI)
Exhibit E	Subcontract Documents
Exhibit F	Jobsite Rules, Safety Requirements and Subcontractor Safety Questionnaire Form
Exhibit G	Schedule of Values
Exhibit H	Payment and Performance Bonds
Exhibit I	Drug Free Workplace Policy
Exhibit J	Federal Requirements
Exhibit K	Contractor's Job Training Plan / Small Business Opportunity Plan
Exhibit L	Contractor's DBE Performance Plan
Exhibit M	Important Notice to Subcontractors
Exhibit N	Construction Quality Management Plan (CQMP)
Exhibit O	Lien Waivers

***Incorporated by Reference***

Contract  
Technical Provisions to the Contract

**3.2** The Subcontract Documents, which are binding on the Subcontractor, are set forth in Article 3.1. The Contractor has made available to the Subcontractor, prior to the execution of the Subcontract, copies of the Subcontract Documents to which the Subcontractor will be bound. The Subcontractor similarly shall make copies of applicable portions of the Subcontract Documents available to its proposed subcontractors and suppliers. Nothing herein shall prohibit the Subcontractor from obtaining copies of the Subcontract Documents from the Contractor at any time after the Subcontract is executed. Where any provision of the documents listed in Article 3 hereof, is inconsistent with a provision of this Subcontract, this Subcontract shall govern. Nothing in the Subcontract Documents shall be construed to create a contractual relationship between persons or entities other than the Contractor and Subcontractor. Any capitalized terms in the Subcontract which are not defined herein shall have the meaning given to them in the Contract.

**ARTICLE 4**  
**SCOPE OF SUBCONTRACT WORK**

**4.1** The Contractor has retained the Subcontractor to provide the labor, materials, equipment and services referred to herein, and to perform the work in the Subcontract Documents as an independent contractor, and the Subcontractor shall perform such work (hereinafter called the "**Subcontract Work**") under the general direction of the Contractor and in accordance with this Subcontract. The Subcontract Documents shall not be construed to create a contractual relationship of any kind between the Owner and the Subcontractor or any Person other than the Contractor.

4.2 The scope of the Subcontract Work is specified in **Exhibit B – “Scope of Work”**.

## **ARTICLE 5** **SURETY BONDING**

Payment and performance bonds in the form set out in **Exhibit H – “Payment Bond and Performance Bonds”**. shall be obtained by Subcontractor. The Subcontractor shall obtain and shall require each sub-subcontractor designated by the Owner to obtain, a Performance Bond and a separate Labor and Material Payment Bond each in the amount of 100% of the Subcontract Price in the case of the Subcontractor, and 100% of the applicable contract amount for each designated sub-subcontractor . The Subcontractor shall deliver the executed originals and two (2) executed copies of each of its required bonds to the Contractor not later than the date of execution of this Subcontract and deliver the executed originals and two (2) executed copies of each of the required sub-subcontractor bonds to the Contractor not later than the date of execution of the subcontract with any such sub-subcontractor.

## **ARTICLE 6** **PERFORMANCE OF WORK**

**6.1 DATE OF COMMENCEMENT.** The date of commencement is the effective date of this Subcontract as first written above (“**Effective Date**”). If Contractor has issued a written notice to proceed to Subcontractor, then such date will be the Effective Date.

**6.2 SCHEDULE OF WORK.** The Subcontractor shall perform the Subcontract Work, and the Subcontract Work shall be substantially complete, in accordance with the dates, activity durations, milestones, deadlines and/or performance rates described in the “Schedule of Work” which is attached hereto as **Exhibit C – “Schedule of Work”**, as revised and updated pursuant to the provisions of this Subcontract (the “**Subcontract Time**”). As the Subcontract Work progresses and in a timely fashion, the Subcontractor shall provide the Contractor with any scheduling information relevant to the Subcontract Work.

**6.2.1** Subject to the provisions of Articles 6.2.2 and 6.2.3 below, to the extent Subcontractor’s performance of the Subcontract Work has been delayed by any acts or omissions of Contractor and/or Contractor’s suppliers or subcontractors (but which have not been in turn caused or contributed to by the acts or omissions of the Subcontractor or its suppliers or subcontractors), Subcontractor shall receive an equitable extension of time and compensation for increased direct costs of performance as a consequence of such delays. Any request for extension of time shall be made in writing to Contractor not more than ten (10) days after the commencement of the delay, otherwise it is waived.

**6.2.2** Should Subcontractor’s performance of the Subcontract Work be delayed by any acts, omissions, or events in respect of which the Contractor has a corresponding right or entitlement under the Contract (which right or entitlement Contractor shall pursue diligently), Subcontractor shall only receive an equitable extension of time or compensation for increased costs if, when, and to the extent Contractor receives a corresponding extension of time and associated cost compensation under the Contract. Any request for extension of time shall be made in writing to Contractor not more than (10) days after the commencement of the delay, otherwise it is waived.

**6.2.3** Subcontractor hereby waives any claim for any increase, damages or additional compensation to the extent that they are not caused by: (i) acts or omissions of Contractor and/or Contractor's suppliers or subcontractors (in respect of which the provisions of Article 6.2.1 shall apply); or (ii) an act, omission or event in respect of which the Contractor has an entitlement under the Contract (in respect of which the provisions of Article 6.2.2 shall apply).

**6.3 SUBCONTRACT PERFORMANCE.** The Subcontractor shall use care, skill and diligence in supervising and directing the Subcontract Work. The Subcontractor shall have responsibility and control over the performance of the Subcontract Work, including the construction methods, techniques, means and sequences for coordinating and completing the various portions of the Subcontract Work, unless the Subcontract gives other specific instructions concerning these matters. The Subcontractor shall perform the Subcontract Work in a good and workmanlike manner in compliance with the Contract, the Subcontract Documents, Good Industry Practice, and all applicable laws, ordinances, rules, regulations, restrictions, public orders of local, state and federal laws. Should Subcontractor at any time refuse or neglect to supply a sufficient number of properly skilled workmen or materials of proper quantity or fail in any respect to prosecute the Subcontract Work with promptness or diligence or any other requirements of the Subcontract Documents, Contractor shall have the right, but not obligation, after five (5) days written notice to Subcontractor, to provide such labor, materials or remedy any such failure and to deduct the cost from any money then due or to become due Subcontractor under this Subcontract. If Contractor must extend the cost of supervision and overhead for such remedy, Subcontractor shall be charged for the costs. Contractor may take over any of Subcontractor's outstanding contracts and purchase orders and take possession of tools, equipment, materials and supplies which are on the Project site, in transit or specifically manufacture goods for the Subcontract Work for use in the exercise of such right. Contractor is hereby granted a lien on all such property to secure performance.

**6.4 TIME IS OF THE ESSENCE.** Time is of the essence for Subcontractor's completion of the Subcontract Work and the Subcontractor agrees to see to the performance of its work and the work of its subcontractors and suppliers so that the entire Project may be completed in accordance with the Contract, the Subcontract Time, and the Schedule of Work.

**6.5 DELAY.** If and to the extent the Subcontractor fails to perform the Subcontract Work in accordance with the Schedule of Work or fails to complete the Subcontract Work for the entire Subcontract within the Subcontract Time, or any approved extension, the Subcontractor shall reimburse and indemnify the Contractor for all damages incurred by the Contractor, including, but not limited to, all damages, acceleration costs, costs, expenses (including any delay liquidated damages imposed upon the Contractor by the Owner under the Contract) caused by any delays by Subcontractor in performing the Subcontract Work.

## **ARTICLE 7**

### **SUBCONTRACT INTERPRETATION**

**7.1 INCONSISTENCIES AND OMISSIONS.** Should inconsistencies or omissions appear in the Subcontract Documents, it shall be the duty of the Subcontractor to so notify the Contractor in writing within three (3) working days of the Subcontractor's discovery thereof. Upon receipt of said notice, the Contractor shall instruct the Subcontractor as to the measures to be taken and the

Subcontractor shall comply with the Contractor's instructions. If the Subcontractor performs work knowing it to be contrary to any applicable laws, statutes, ordinances, building codes, rules or regulations without notice to the Contractor and advance approval by appropriate authorities, including the Contractor, then the Subcontractor shall assume full responsibility for such work and shall bear all associated costs, charges, fees and expenses necessarily incurred to remedy the violation.

**7.2 LAW AND EFFECT.** This Subcontract shall be governed by federal law and the law of the State of Texas.

**7.3 SEVERABILITY AND WAIVER.** The partial or complete invalidity of any one or more provisions of this Subcontract shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Subcontract, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.

**7.4 ATTORNEY'S FEES.** Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions hereof, to protect its interest in any manner arising under this Subcontract, or to recover on a surety bond furnished by a party to this Subcontract, the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges, and expenses expended or incurred therein.

**7.5 TITLES.** The titles given to the Articles of this Subcontract are for ease of reference only and shall not be relied upon or cited for any other purposes.

**7.6 ENTIRE AGREEMENT.** This Subcontract and attachments are solely for the benefit of the signatories hereto and represents the entire and integrated agreement between the parties hereto and, unless specifically referenced herein, supersedes all prior negotiations, representations, plans, documents or agreements, either written or oral.

**7.7 CAPITALIZATION.** All capitalized terms not defined in the Subcontract shall have the meaning give to them in the Contract.

## **ARTICLE 8**

### **CONTRACTOR'S OBLIGATIONS**

**8.1 AUTHORIZED REPRESENTATIVE.** The Contractor shall designate one or more persons who shall be the Contractor's authorized representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) the Subcontractor shall look to for instructions, orders and/or directions, except in an Emergency. In the case of an Emergency, Subcontractor shall comply with the emergency provisions contained within the Project Management Plan created pursuant to the Contract.

**8.2 TIMELY COMMUNICATION.** The Contractor, with reasonable promptness, shall transmit to the appropriate parties all submittals, transmittals, and written approval relating to the Subcontract Work. Unless otherwise specified in the Subcontract Documents, communications by

and with the Subcontractor's subcontractors, material suppliers and suppliers shall be through the Subcontractor.

## **ARTICLE 9**

### **SUBCONTRACTOR'S OBLIGATIONS**

**9.1 RESPONSIBILITIES.** The Subcontractor shall furnish all of the labor, materials, equipment, and services, including, but not limited to, competent supervision, shop drawings, samples, tools, and scaffolding as are necessary for the proper performance of the Subcontract Work in accordance with the Subcontract Documents. The Subcontractor shall provide to the Contractor a list of its proposed subcontractors and suppliers, and be responsible for providing tests, ordering of materials and all other actions as required to perform the Subcontract Work and to comply with the Schedule of Work.

**9.2 SUBCONTRACTOR'S OBLIGATIONS FOR SITE VISITATION.** The Subcontractor acknowledges that before entering into this Subcontract it has visited the Project site and inspected the general and local conditions, which could affect the Subcontract Work. Any failure of the Subcontract to reasonably ascertain from an inspection of the site, the general and local conditions which could affect the Subcontract Work, will not relieve the Subcontractor from its responsibility to properly complete the Subcontract Work without additional expense to the Contractor.

**9.3 SHOP DRAWINGS, SAMPLES, PRODUCT DATA AND MANUFACTURERS' LITERATURE.** The Subcontractor promptly shall submit for approval to the Contractor all shop drawings, samples, product data, manufacturers' literature and similar submittals required by the Subcontract Documents. The Subcontractor shall be responsible to the Contractor for the accuracy and conformity of its submittals to the Subcontract Documents. The Subcontractor shall prepare and deliver its submittals to the Contractor in a manner consistent with the Schedule of Work and in such time and sequence so as not to delay the Contractor or others in the performance of the Subcontract Work. The approval of any Subcontractor submittal shall not be deemed to authorize deviations, substitutions or changes in the requirements of the Subcontract Documents unless express written approval is obtained from the Contractor authorizing such deviations, substitutions or change. In the event that the Subcontract Documents do not contain submittal requirements pertaining to the Subcontract Work, the Subcontractor agrees upon request to submit in a timely fashion to the Contractor for approval any shop drawings, samples, product data, manufacturers' literature or similar submittals as may reasonably be required by the Contractor.

**9.3.1** The Contractor and Owner are entitled to rely on the accuracy and completeness of any professional certifications required by the Subcontract Documents concerning the performance criteria of systems, equipment or materials, including all calculations relating thereto and any governing performance requirements.

**9.4 COORDINATION AND COOPERATION.** The Subcontractor shall: (a) cooperate with the Contractor, the Owner and their respective authorized representatives and all others whose work may interfere with the Subcontract Work; (b) specifically note and immediately advise the Contractor of any interference with the Subcontract Work; and (c) participate in the preparation of coordination drawings and work schedules involving the Subcontract Work.

**9.5 AUTHORIZED REPRESENTATIVE.** The Subcontractor shall designate one or more persons who shall be the authorized Subcontractor's representative(s) on-site and off-site. Such authorized representative(s) shall be the only person(s) to whom the Contractor shall issue instructions, orders or directions, except in an emergency. The Subcontractor's initial authorized representative as at the date hereof is:

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

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

**9.6 COMMUNICATIONS.** Unless otherwise provided in the Subcontract Documents, Subcontractor communications by and with the Owner, separate contractors and/or other subcontractors and suppliers of Contractor, regardless of tier, shall be through the Contractor.

**9.7 TESTS AND INSPECTIONS.** The Subcontractor shall schedule all required tests, approvals and inspections of the Subcontract Work or portions thereof at appropriate times so as not to delay the progress of the Subcontract Work or the Project, having consideration for the works of other contractors on site. The Subcontractor shall bear all expenses associated with tests, inspections and approvals required of the Subcontractor by the Subcontract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity approved by the Contractor. Required certificates of testing, approval or inspection shall, unless otherwise required by the Subcontract Documents, be secured by the Subcontractor and promptly delivered to the Contractor.

**9.8 WORKMANSHIP.** Every part of the Subcontract Work shall be executed in accordance with the Subcontract Documents in a workmanlike and substantial manner. All materials used in the Subcontract Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Subcontract Work.

**9.9 MATERIALS FURNISHED BY OTHERS.** In the event the scope of the Subcontract Work includes installation of materials or equipment furnished by others, it shall be the responsibility of the Subcontractor to examine the items so provided and thereupon handle, store and install the items, with such skill and care as to ensure a satisfactory and proper installation. Loss or damage due to acts of the Subcontractor shall be deducted from any amounts due or to become due the Subcontractor under this Subcontract.

**9.10 SUBSTITUTIONS.** No substitutions shall be made in the Subcontract Work unless permitted in the Subcontract Documents and only then upon the Subcontractor first receiving all approvals required under the Subcontract Documents for substitutions.

**9.11 WARRANTY.** The Subcontractor warrants to the Contractor that: (a) all work furnished pursuant to the Subcontract Documents shall conform to Good Industry Practice; (b) the Subcontract Works shall be free of defects, including design Errors (to the extent the Subcontract Works include provision of design); (c) materials and equipment furnished under the Subcontract Documents shall be of good quality and new; (d) all Subcontract Work shall be fit for use for the intended function; and (e) the Subcontract Work shall meet all of the requirements of the

Subcontract Documents. The Subcontractor agrees to satisfy such warranty obligations, including timely remediation of defects at no cost for the Contractor, which appear within the warranty period established in the Subcontract Documents without cost to the Contractor. Unless otherwise specified in the Subcontract Documents, *the Subcontractor warrants, to the Contractor, the Owner, and any third parties for whom the Subcontractor Work is being performed or equipment, tools, supplies or software is being supplied by such Subcontractor, the Subcontract Work as described above for a period of one (1) year from the date of Project Final Acceptance as defined in the Contract.* The Subcontractor further agrees to furnish any special warranties that shall be required in accordance with the Subcontract Documents for the Subcontract Work prior to final payment. Insurance shall be maintained current throughout this warranty period. All representations, warranties, guarantees, and obligations of the Subcontractor shall survive all Contractor and/or Owner inspections, tests, and approvals. The Contractor is permitted to assign to the Owner any warranties it obtains from the Subcontractor. The warranties are in addition to all rights and remedies available under the Subcontract Documents or applicable Law or in equity, and shall not limit the Subcontractor's liability or responsibility imposed by the Subcontract Documents or applicable Law or in equity with respect to the Subcontract Work, including liability for design defects (to the extent the Subcontract Works include provision of design), latent construction defects, strict liability, breach, negligence, intentional misconduct or fraud.

## **9.12 UNCOVERING/CORRECTION OF WORK.**

**9.12.1 UNCOVERING OF WORK.** Subcontractor shall inform Contractor of any part of the Subcontract Work that is about to be covered and offer a full and adequate opportunity to Contractor to inspect and test such part of the Subcontract Work before it is covered. If required in writing by the Contractor, the Subcontractor must uncover any portion of the Subcontract Work which has been covered by the Subcontractor in violation of the Subcontract Documents or contrary to a directive issued to the Subcontractor by the Contractor. Upon receipt of a written directive from the Contractor, the Subcontractor shall uncover such work for the Contractor's or Owner's inspection and then restore the work to the standard required in the Subcontract Documents at the Subcontractor's time and expense. If the Subcontract Work exposed or examined is not in conformance with the requirements of the Subcontract Documents, then uncovering, removing and restoring the Subcontract Work and recovery of any delay to any Critical Path in the Subcontract Time occasioned thereby shall be at Subcontractor's cost and Subcontractor shall not be entitled to any adjustment to the Subcontract Price or any Subcontract Time or any other relief. Furthermore, any Subcontract Work done or materials used without adequate notice to and opportunity for prior inspection by Contractor or without inspection in accordance with the Subcontract Documents or Project Management Plan may be ordered uncovered, removed or restored at Subcontractor's cost and without an adjustment to the Subcontract Price or Subcontract Time or any other relief, even if the Subcontract Work proves acceptable and conforming after uncovering.

**9.12.2** The Contractor may direct the Subcontractor to uncover portions of the Subcontract Work for the inspection by the Owner or Contractor at any time. The Subcontractor is required to uncover such work whether or not the Contractor or Owner had requested to inspect the work prior to it being uncovered. Except as provided in Article 9.12.1, if Subcontract Work exposed or examined under this Article is in conformance with the requirements of the Subcontract Documents, then any delay in any Critical Path of the Subcontract Time from uncovering, removing and restoring

Subcontract Work shall be reconciled in a Change Order for the cost of such efforts and recovery of any delay to any Critical Path of the Subcontract Time occasioned thereby.

**9.12.3 CORRECTION OF WORK.** The Subcontractor is required to correct in a timely fashion any Subcontract Work rejected by the Contractor, Owner or any Governing Authority having jurisdiction over the Subcontract Work for failing to comply with the Subcontract Documents, Good Industry Practice or applicable Law whether observed prior to commencement of the warranty period(s) or during the warranty period(s) established under Article 9.11. The Subcontractor shall correct at its own cost and time and bear the expense of additional services for any nonconforming Subcontract Work for which it is responsible.

**9.13 CLEANUP.** The Subcontractor shall follow the Contractor's cleanup directions, and at all times keep the units, buildings and premises free from debris resulting from the Subcontract Work, and clean each work area prior to discontinuing work in each area. If the Subcontractor fails to commence compliance with cleanup duties within twenty-four (24) hours after written notification from the Contractor of noncompliance, the Contractor may implement appropriate cleanup measures without further notice and deduct the cost thereof from any amounts due or to become due the Subcontractor under this Subcontract.

**9.14 SAFETY.** The Subcontractor is required to perform the Subcontract Work in a safe manner. The Subcontractor shall seek to avoid injury, loss or damage to persons or property by taking all necessary steps to protect: (a) employees and other persons on the site; (b) materials and equipment stored at the site or at off-site locations for use in performance of the Subcontract Work; and (c) all property and structures located at the site and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Subcontract Work.

**9.14.1** The Subcontractor shall give all required notices and comply with all applicable rules, regulations, orders and other lawful requirements established to prevent injury, loss or damage to persons or property.

**9.14.2** The Subcontractor shall implement appropriate safety measures, in strict compliance to OSHA pertaining to the Subcontract Work, including establishing safety rules, posting appropriate warnings and notices, erecting safety barriers, and establishing proper notice procedures to protect persons and property at the site and adjacent thereto from injury, loss or damage. No one under the age of 18 allowed to work.

**9.14.3** The Subcontractor is required to promptly remedy any loss or damage caused to the work, materials, equipment and property referred to in paragraphs (b) and (c) of Article 9.14 above, but only to the extent caused in whole or in part by the Subcontractor and/or persons or entities performing work for or on behalf of the Subcontractor, regardless of tier, who have furnished labor, material or services relating to the Subcontract and for whose acts the Subcontractor may be liable. The Subcontractor shall not be required to remedy any loss or damage, which is not attributable to the fault or negligence of the Subcontractor, or of any person or entity for whose acts the Subcontractor may be liable.

**9.14.4** The Subcontractor is required to designate an individual at the site in the employ of the Subcontractor who shall act as the Subcontractor's designated safety representative with a duty to

prevent accidents. Unless otherwise identified by the Subcontractor in writing to the Contractor, the designated safety representative shall be the Subcontractor's project superintendent.

**9.14.5** The Subcontractor has an affirmative duty not to overload the structures or conditions at the site and shall take reasonable steps not to load any part of the structures, or site so as to give rise to an unsafe condition or create an unreasonable risk of personal injury or property damage.

**9.14.6** The Subcontractor shall give prompt written notice to the Contractor of any accident involving personal injury requiring a physician's care, any property damage exceeding Five Hundred Dollars (\$500.00) in value, or any failure that could have resulted in serious personal injury, whether or not such an injury was sustained.

**9.14.7** Prevention of accidents at the site is the responsibility of the Contractor, Subcontractor, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Subcontractor or other parties of their safety responsibilities. The Subcontractor shall establish its own safety program implementing safety measures, policies and standards conforming to those required by governmental and quasigovernmental authorities having jurisdiction and by the Contractor and Owner, including, but not limited to, requirements imposed by the Subcontract Documents. The Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Subcontract Work which the Contractor deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Subcontractor's unsafe practices shall not release the Subcontractor of the responsibility therefore. The Subcontractor shall notify the Contractor immediately following an accident and promptly confirm the notice in writing. A detailed written report shall be furnished if requested by the Contractor. The Subcontractor shall indemnify the Contractor for fines, or penalties imposed on the Contractor as a result of safety violations, but only to the extent that such fines, or penalties are caused by the Subcontractor's failure to comply with applicable safety requirements.

**9.14.8** Subcontractor shall conduct safety meetings with all its employees, agents and lower tier subcontractors prior to and throughout construction of the project while Subcontractor is performing Subcontract Work on site, copies of which shall be provided the Contractor. Subcontractor shall maintain and provide the Contractor with a written health and safety program and a written hazard communication program.

**9.14.9** If any individual employed by the Subcontractor is not performing the Subcontract Work in a proper, safe and skillful manner, then the Contractor may, or may cause the Subcontractor to, remove such individual and such individual shall not be re-employed on the Subcontract Work. If, after notice and reasonable opportunity to cure, such individual is not removed or if the Subcontractor fails to ensure that skilled and experienced personnel are furnished for the proper performance of the Subcontract Work, then the Contractor may suspend the affected portion of the Subcontract Work by delivery of notice of such suspension to the Subcontractor. Such suspension shall be considered a suspension for cause and shall in no way relieve the Subcontractor of any obligation contained in the Subcontract Documents or entitle the Subcontractor to any additional compensation or time extension hereunder.

**9.15 PERMITS, FEES AND LICENSES.** The Subcontractor shall give adequate notices to authorities pertaining to the Subcontract Work and secure, maintain and pay for all permits, fees, licenses, assessments, and inspections and taxes necessary to complete the Subcontract Work in accordance with the Subcontract Documents.

**9.16 DELEGATION OR SUBCONTRACTING OF DUTIES.** The Subcontractor is prohibited from delegating, transferring, conveying, subcontracting, relinquishing or otherwise disposing of the whole or any part of its duties under this Subcontract without the prior written approval of the Contractor. The Contractor's approval shall not be unreasonably withheld or delayed.

**9.17 MATERIAL SAFETY.** Material Safety Data (MSD) sheets as required by law and pertaining to materials or substances used or consumed in the performance of the Subcontract Work shall be submitted to the Contractor by the Subcontractor. MSD sheets obtained by the Contractor from other subcontractors or sources shall be made available to the Subcontractor by the Contractor.

**9.18 SATISFACTION OF OPERATIONS AND MAINTENANCE REQUIREMENTS.** To the extent applicable to the Subcontract Work, the Subcontractor shall demonstrate to the Contractor's and Owner's reasonable satisfaction that the Subcontractor has completed training of operations and maintenance personnel related to the Subcontract Work, which demonstration shall consist of (a) delivery to the Contractor and Owner of a written certificate, in form acceptable to the Contractor and Owner, executed by the Subcontractor that it is fully staffed with such trained personnel and are ready, willing, and able to operate and maintain its Subcontract Work in the Project in accordance with the terms and conditions of the Subcontract Documents, (b) delivery to the Contractor and Owner of training records and course completion certificates issued to each of the subject personnel, and (c) the Contractor's and Owner's verification that the training program and number of trained personnel meet the standards in the Hazardous Material Management Plan and section 4.3.5 of the Technical Provisions of the Contract, if applicable.

**9.19 FLOW DOWN.** The Subcontractor shall assume toward the Contractor all obligations and responsibilities which the Contractor has assumed toward the Owner under the Contract insofar as they relate to the Subcontract Work. In case of conflict between the terms of this Subcontract and the Contract, the Subcontract shall control. Notwithstanding the foregoing, the imposition on the Subcontractor of particular obligations or restrictions under this Subcontract in addition to those under the Contract shall not be or be deemed to constitute a conflict, discrepancy, ambiguity or inconsistency. The Contract has been and remains available to the Subcontractor for review.

**9.20 PROJECT MANAGEMENT PLAN, JOB TRAINING PLAN/SMALL BUSINESS OPPORTUNITY.** The Subcontractor hereby agrees to abide by the applicable portions of the Contractor's Project Management Plan and Job Training Plan/Small Business Opportunity Plan set forth as Exhibit 8 to the Contract and appended hereto as Exhibit K. The Subcontractor shall include this Article 9.20 in every sub-subcontract (including purchase orders and task orders for any Subcontract Work), and shall require that each sub-subcontractor include this section in all sub-subcontracts at lower tiers (including purchase orders and task orders for Subcontract Work),

except for sub-subcontracts with the Owner or Governmental Entities, so that such provisions will be binding upon each sub-subcontractor.

**9.21 CLAYTON ACT ASSIGNMENT.** The Subcontractor shall assign to the Contractor all right, title and interest in and to all claims and causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15), arising from purchases of goods, services or materials pursuant to the Subcontract Documents or any sub-subcontract. This assignment shall be made and become effective at the time the Contractor tenders Final Payment to the Subcontractor, without further acknowledgment by the parties to the Subcontract.

**9.22 COOPERATION.** The Subcontractor at all times shall coordinate and cooperate, and require its sub-subcontractors to coordinate and cooperate, with the Contractor, the Owner, and their Authorized Representative to facilitate the Owner's oversight activities. The Subcontractor shall cause its representatives to be available at all reasonable times for consultation with the Contractor and the Owner.

**9.23 DOCUMENTATION AND FINANCING INFORMATION.** The Subcontractor shall cooperate and provide, and shall cause the sub-subcontractors to cooperate and provide, such information as determined necessary or desirable by the Contractor and the Owner in connection with any Project financing. The Subcontractor shall cooperate and provide, and shall cause its sub-subcontractors to cooperate and provide, such information as is necessary or requested by the Contractor and the Owner to assist or facilitate the submission by the Owner of any documentation, reports or analysis required by the State, FHWA or any other Governmental Entity with jurisdiction over the Project.

**9.24 AUDITS.** All Claims or Disputes filed against the Contractor and the Owner shall be subject to audit at any time following the filing of the Claim or Dispute. The audit may be performed by employees of the Contractor and the Owner or by an auditor under contract with the Contractor and the Owner. No notice is required before commencing any audit (i) within 60 days after Final Acceptance or (ii) within 60 days after termination of this Subcontract. Thereafter, the Contractor or the Owner shall provide 20 days' notice to the Subcontractor or its agents before commencing an audit. The Subcontractor shall provide adequate facilities, acceptable to the Contractor and the Owner, for the audit during normal business hours. The Subcontractor or its agents shall cooperate with the auditors. Failure of the Subcontractor or its agents to maintain and retain sufficient records to allow the auditors to verify all or a portion of the Claim or Dispute or to permit the auditor access to the books and records of the Subcontractor or its agents shall constitute a waiver of the Subcontractor's interest in a Claim or Dispute and shall bar any recovery thereunder. At a minimum, the auditors shall have available to them the following documents:

- (a) Daily time sheets and supervisor's daily reports;
- (b) Union agreements;
- (c) Insurance, welfare, and benefits records;
- (d) Payroll registers;
- (e) Earnings records;

- (f) Payroll tax forms;
- (g) Material invoices and requisitions;
- (h) Material cost distribution work sheet;
- (i) Equipment records (list of company equipment, rates, etc.);
- (j) Subcontractors' (including Suppliers) invoices;
- (k) Subcontractors' and agents' payment certificates;
- (l) Canceled checks (payroll, Subcontractors and Suppliers);
- (m) Job cost report;
- (n) Job payroll ledger;
- (o) General ledger;
- (p) Cash disbursements journal;
- (q) Project Schedules;
- (r) All documents that relate to each and every Claim or Dispute, together with all documents that support the amount of damages as to each Claim or Dispute; and
- (s) Work sheets used to prepare the Claim or Dispute establishing the cost components for items of the Claim or Dispute, including labor, benefits and insurance, materials, equipment, subcontractors, all documents that establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals.

The Subcontractor represents and warrants the completeness and accuracy of all information it or its agents provides in connection with Contractor and Owner audits, and shall cause all sub-subcontractors other than Owner and Governmental Entities acting as sub-subcontractors to warrant the completeness and accuracy of all information such sub-subcontractors or their agents provides in connection with Contractor and Owner audits. The Contractor's and the Owner's rights of audit include the right to observe the business operations of the Subcontractor and its sub-subcontractors to confirm the accuracy of books and records.

**9.25 TAXES.** The Subcontractor shall pay, prior to delinquency, all applicable sales, use, income, employment, fees, tariffs or other taxes associated with (a) purchases or leases required for the Subcontractor to perform the Subcontract Work and (b) its performance of the Subcontract Work, and the Subcontractor shall have no right to an adjustment in the Subcontract Price with respect thereto.

**ARTICLE 10**  
**INSURANCE**

**10.1 SUBCONTRACTOR’S INSURANCE.** The Contractor has implemented a Contractor Controlled Insurance Program (“CCIP”) for this project. The CCIP is described in the attached **Exhibit D – “Contractor Controlled Insurance Program (CCIP) and Sample Certificate of Insurance (COI)”** and capitalized terms used in this Article 10 and not otherwise defined in the Subcontract Documents shall have the meaning given to them in Exhibit D. A copy of the CCIP Insurance Manual referenced in Exhibit D is also attached to and made a part of this Subcontract. The Contractor or its CCIP Administrator shall determine if the Subcontractor will be considered eligible to enroll in the CCIP or be declared an Ineligible Party. Subcontractor shall provide the insurance required of either an Enrolled Party or an Excluded Party, as appropriate, as described in the attached CCIP Addendum and CCIP Insurance Manual.

**ARTICLE 11**  
**INDEMNIFICATION**

**11.1 INDEMNITY BY SUBCONTRACTOR.**

**11.1.1 SUBJECT TO ARTICLE 11.1.2, SUBCONTRACTOR SHALL RELEASE, PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CONTRACTOR, THE OWNER, THE STATE, THE TEXAS TRANSPORTATION COMMISSION, HNTB, AND THEIR RESPECTIVE SUCCESSORS, ASSIGNS, OFFICEHOLDERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES, CONSULTANTS, AND EMPLOYEES (COLLECTIVELY, “INDEMNIFIED PARTIES”) FROM AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, SUITS, JUDGMENTS, INVESTIGATIONS, LEGAL OR ADMINISTRATIVE PROCEEDINGS, DEMANDS AND LOSSES, IN EACH CASE IF ASSERTED OR INCURRED BY OR AWARDED TO ANY THIRD PARTY, ARISING OUT OF, RELATING TO OR RESULTING FROM:**

- (a) THE BREACH OR ALLEGED BREACH OF ANY OF THE SUBCONTRACT OR SUBCONTRACT DOCUMENTS BY SUBCONTRACTOR;**
- (b) THE FAILURE OR ALLEGED FAILURE BY SUBCONTRACTOR TO COMPLY WITH THE GOVERNMENTAL APPROVALS, ANY APPLICABLE ENVIRONMENTAL LAWS OR OTHER LAWS (INCLUDING LAWS REGARDING HAZARDOUS MATERIALS MANAGEMENT) RELATED TO THE SUBCONTRACT WORK;**
- (c) ANY ALLEGED PATENT OR COPYRIGHT INFRINGEMENT OR OTHER ALLEGEDLY IMPROPER APPROPRIATION OR USE OF TRADE SECRETS, PATENTS, PROPRIETARY INFORMATION, KNOW-HOW, COPYRIGHT RIGHTS OR INVENTIONS IN PERFORMANCE OF THE SUBCONTRACT WORK, OR ARISING OUT OF ANY USE IN CONNECTION WITH THE PROJECT OF METHODS, PROCESSES, DESIGNS, INFORMATION, OR OTHER ITEMS FURNISHED OR COMMUNICATED TO CONTRACTOR OR ANOTHER INDEMNIFIED PARTY PURSUANT TO THIS SUBCONTRACT;**

**PROVIDED HOWEVER THAT THIS INDEMNITY SHALL NOT APPLY TO ANY INFRINGEMENT TO THE EXTENT RESULTING FROM THE CONTRACTOR OR OWNER'S FAILURE TO COMPLY WITH SPECIFIC WRITTEN INSTRUCTIONS REGARDING USE PROVIDED TO OWNER OR CONTRACTOR BY SUBCONTRACTOR;**

- (d) THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH OR MISCONDUCT OF SUBCONTRACTOR IN OR ASSOCIATED WITH PERFORMANCE OF THE SUBCONTRACT WORK;**
- (e) ANY AND ALL CLAIMS BY ANY GOVERNMENTAL OR TAXING AUTHORITY CLAIMING TAXES BASED ON GROSS RECEIPTS, PURCHASES OR SALES, THE USE OF ANY PROPERTY OR INCOME OF SUBCONTRACTOR WITH RESPECT TO ANY PAYMENT FOR THE SUBCONTRACT WORK MADE TO OR EARNED BY SUBCONTRACTOR;**
- (f) ANY AND ALL STOP NOTICES OR LIENS FILED IN CONNECTION WITH THE SUBCONTRACT WORK, INCLUDING ALL EXPENSES AND ATTORNEYS', ACCOUNTANTS' AND EXPERT WITNESS FEES AND COSTS INCURRED IN DISCHARGING ANY STOP NOTICE OR LIEN, AND ANY OTHER LIABILITY TO SUB-SUBCONTRACTORS FOR FAILURE TO PAY SUMS DUE FOR THEIR WORK OR SERVICES, PROVIDED THAT CONTRACTOR HAS PAID ALL UNDISPUTED AMOUNTS OWING TO SUBCONTRACTOR WITH RESPECT TO SUCH SUBCONTRACT WORK;**
- (g) ANY ACTUAL OR THREATENED SUBCONTRACTOR RELEASE OF HAZARDOUS MATERIALS;**
- (h) THE CLAIM OR ASSERTION BY ANY OTHER OWNER CONTRACTOR OR SUBCONTRACTOR: (I) THAT SUBCONTRACTOR FAILED TO COOPERATE REASONABLY WITH SUCH OTHER OWNER CONTRACTOR OR SUBCONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY OR LOSS, EXCEPT WHERE SUBCONTRACTOR WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK OR (II) THAT SUBCONTRACTOR INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER OWNER CONTRACTOR OR SUBCONTRACTOR, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY OR LOSS, TO THE EXTENT SUCH CLAIM ARISES OUT OF THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH OR MISCONDUCT OF SUBCONTRACTOR;**
- (i) SUBCONTRACTOR'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, OR ANY DISPUTE BETWEEN SUBCONTRACTOR AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;**

- (j) SUBCONTRACTOR’S BREACH OF OR FAILURE TO PERFORM AN OBLIGATION THAT OWNER OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER LAW OR UNDER ANY AGREEMENT BETWEEN OWNER AND A THIRD PERSON, WHERE CONTRACTOR HAS DELEGATED PERFORMANCE OF THE OBLIGATION TO SUBCONTRACTOR UNDER THE SUBCONTRACT DOCUMENTS OR (II) THE ACTS OR OMISSIONS OF SUBCONTRACTOR WHICH RENDER OWNER UNABLE TO PERFORM OR ABIDE BY AN OBLIGATION THAT OWNER OWES TO A THIRD PERSON, INCLUDING GOVERNMENTAL ENTITIES, UNDER ANY AGREEMENT BETWEEN OWNER AND A THIRD PERSON, WHERE THE AGREEMENT WAS EXPRESSLY DISCLOSED TO SUBCONTRACTOR;**
- (k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY SUBCONTRACTOR IN OR ASSOCIATED WITH THE PERFORMANCE OF THE SUBCONTRACT WORK;**
- (l) INVERSE CONDEMNATION, TRESPASS, NUISANCE OR SIMILAR TAKING OF OR HARM TO REAL PROPERTY BY REASON OF: (i) THE FAILURE OF SUBCONTRACTOR TO COMPLY WITH GOOD INDUSTRY PRACTICES, REQUIREMENTS OF THE SUBCONTRACT DOCUMENTS, PROJECT MANAGEMENT PLAN OR GOVERNMENTAL APPROVALS RESPECTING CONTROL AND MITIGATION OF CONSTRUCTION ACTIVITIES AND CONSTRUCTION IMPACTS, (ii) THE INTENTIONAL MISCONDUCT OR NEGLIGENCE OF SUBCONTRACTOR, OR (iii) THE ACTUAL PHYSICAL ENTRY ONTO OR ENCROACHMENT UPON ANOTHER’S PROPERTY BY SUBCONTRACTOR; AND**
- (m) ERRORS, INCONSISTENCIES OR OTHER DEFECTS IN THE DESIGN (IF APPLICABLE TO THE SUBCONTRACT WORK), CONSTRUCTION, OPERATION OR MAINTENANCE (IF APPLICABLE TO THE SUBCONTRACT WORK) OF THE SUBCONTRACT WORK OR OF UTILITY ADJUSTMENTS INCLUDED IN THE SUBCONTRACT WORK.**

**11.1.2** Subject to the releases and disclaimers herein, Subcontractor’s indemnity obligation shall not extend to any third party Loss under Article 11.1.1 to the extent caused by:

- (a) The negligence, reckless or intentional misconduct, bad faith or fraud of such Indemnified Party;
- (b) Contractor’s material breach of any of its material obligations under the Subcontract Documents;
- (c) An Indemnified Party’s material violation of any Laws or Governmental Approvals; or
- (d) An unsafe requirement inherent in prescriptive design or prescriptive construction specifications of the Technical Provisions, but only where prior to occurrence of the third party Loss: (i) Subcontractor complied with such specifications and did not actually know, or would not have known, while exercising reasonable diligence, that the requirement

created a potentially unsafe condition or (ii) Subcontractor knew of and reported to Contractor the potentially unsafe requirement.

**11.1.3** In claims by an employee of Subcontractor, a Sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 11.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor or a Sub-subcontractor under workers' compensation, disability benefit or other employee benefits laws.

**11.1.4** For purposes of this Article 11.1, "third party" means any person or entity other than an Indemnified Party and Subcontractor, except that a "third party" includes any Indemnified Party's employee, agent or contractor who asserts a claim against an Indemnified Party which is within the scope of the indemnities and which is not covered by the Indemnified Party's worker's compensation program.

**11.1.5** Subcontractor hereby acknowledges and agrees that it is Subcontractor's obligation to perform the Subcontract Work in accordance with the Subcontract Documents and that the Indemnified Parties are fully entitled to rely on Subcontractor's performance of such obligation. Subcontractor further agrees that any certificate, review and/or approval by Contractor and/or others hereunder shall not relieve Subcontractor of any of its obligations under the Subcontract Documents or in any way diminish its liability for performance of such obligations or its obligations under this Article 11.

**11.1.6** The indemnities set forth in Section 11 are intended to operate as agreements pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9607(e), to insure, protect, hold harmless and indemnify the Indemnified Parties. The obligations under this Article 11 shall not be construed to negate, abridge, or reduce other rights or obligations that would otherwise exist in favor of an Indemnified Party hereunder.

## **11.2 DEFENSE AND INDEMNIFICATION PROCEDURES**

**11.2.1** If any of the Indemnified Parties receives notice of a claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Article 11.1, Contractor shall by writing as soon as practicable after receipt of the claim: (a) inform Subcontractor of the claim; (b) send to Subcontractor a copy of all written materials Contractor has received asserting such claim; and (c) notify Subcontractor that should no insurer accept defense of the claim, the Indemnified Party will conduct its own defense unless Subcontractor accepts the tender of the claim in accordance with Article 11.2.3. As soon as practicable after Subcontractor receives notice of a claim or otherwise has actual knowledge of a claim, it shall tender the claim in writing to the insurers under all potentially applicable insurance policies. Contractor and other Indemnified Parties also shall have the right to tender such claims to such insurers.

**11.2.2** Subject to Article 11.2.6, if the insurer under any applicable insurance policy accepts the tender of defense, Contractor and Subcontractor shall cooperate in the defense as required by the insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Article 11.2.3 shall apply.

**11.2.3** If the defense is tendered to Subcontractor, then within 30 days after receipt of the tender it shall notify the Indemnified Party whether it has tendered the matter to an insurer and (if not tendered to an insurer or if the insurer has rejected the tender) shall deliver a notice stating that Subcontractor:

- (a) Accepts the tender of defense and confirms that the claim is subject to full indemnification hereunder without any “reservation of rights” to deny or disclaim full indemnification thereafter;
- (b) Accepts the tender of defense but with a “reservation of rights” in whole or in part; or
- (c) Rejects the tender of defense based on a determination that it is not required to indemnify against the claim under the terms of this Subcontract.

**11.2.4** If Subcontractor accepts the tender of defense under Article 11.2.3(a), Subcontractor shall have the right to select legal counsel for the Indemnified Party, subject to reasonable approval by the Indemnified Party, and Subcontractor shall otherwise control the defense of such claim, including settlement, and bear the fees and costs of defending and settling such claim. During such defense:

- (a) Subcontractor shall fully and regularly inform the Indemnified Party of the progress of the defense and of any settlement discussions; and
- (b) The Indemnified Party shall fully cooperate in said defense, provide to Subcontractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Indemnified Party, and maintain the confidentiality of all communications between it and Subcontractor concerning such defense.

**11.2.5** If Subcontractor responds to the tender of defense as specified in Articles 11.2.3(b) or 11.2.3(c), the Indemnified Party shall be entitled to select its own legal counsel and otherwise control the defense of such claim, including settlement.

**11.2.6** The Indemnified Party may assume its own defense by delivering to Subcontractor notice of such election and the reasons therefor, if the Indemnified Party, at the time it gives notice of the claim or at any time thereafter, reasonably determines that:

- (a) A conflict exists between it and Subcontractor which prevents or potentially prevents Subcontractor from presenting a full and effective defense;
- (b) Subcontractor is otherwise not providing an effective defense in connection with the claim; or
- (c) Subcontractor lacks the financial capacity to satisfy potential liability or to provide an effective defense.

**11.2.7** If the Indemnified Party is entitled and elects to conduct its own defense pursuant hereto of a claim for which it is entitled to indemnification, Subcontractor shall reimburse on a current

basis all reasonable costs and expenses the Indemnified Party incurs in investigating and defending, except to the extent the Indemnified Party conducts its own defense as a result of Subcontractor's denial of such defense pursuant TO Article 11.2.3(c). In the event the Indemnified Party is entitled to and elects to conduct its own defense, then:

- (a) In the case of a defense conducted under Article 11.2.3(a), it shall have the right to settle or compromise the claim with Subcontractor's prior consent, which shall not be unreasonably withheld or delayed;
- (b) In the case of a defense conducted under Article 11.2.3(b), it shall have the right to settle or compromise the claim with Subcontractor's prior consent, which shall not be unreasonably withheld or delayed, or with approval of the court or arbitrator following reasonable notice to Subcontractor and opportunity to be heard and without prejudice to the Indemnified Party's rights to be indemnified by Subcontractor; and
- (c) In the case of a defense conducted under Article 11.2.3(c), it shall have the right to settle or compromise the claim without Subcontractor's prior consent and without prejudice to its rights to be indemnified by Subcontractor. If a dispute resolver determines that Subcontractor wrongfully denied the defense of the Indemnified Party, the Indemnified Party shall be entitled to reimbursement of the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, and indemnification of costs to settle or compromise the claim, in addition to interest at the rate calculated in accordance with Section 24.13 of the Contract payable on such defense and settlement amounts from the date such costs and expenses are incurred by the Indemnified Party.

**11.2.8** The Parties acknowledge that while Article 11.1 contemplates that Subcontractor will have responsibility for certain claims and liabilities arising out of its obligations to indemnify, circumstances may arise in which there may be shared liability of the Parties with respect to such claims and liabilities. In such case, where either Party believes a claim or liability may entail shared responsibility and that principles of comparative negligence and indemnity are applicable, it shall confer with the other Party on management of the claim or liability in question. If the Parties cannot agree on an approach to representation in the matter in question, each shall arrange to represent itself and to bear its own costs in connection therewith pending the outcome of such matter. Within 30 days subsequent to the final, non-appealable resolution of the matter in question, whether by arbitration or by judicial proceedings, the Parties shall adjust the costs of defense, including reimbursement of reasonable attorneys' fees and other litigation and defense costs, in accordance with the indemnification arrangements of Article 11.2, and consistent with the outcome of such proceedings concerning the respective liabilities of the Parties on the third party claim.

**11.2.9** In determining responsibilities and obligations for defending suits pursuant to this Article 11.2, specific consideration shall be given to the following factors: (a) the party performing the activity in question; (b) the location of the activity and incident; (c) contractual arrangements then governing the performance of the activity; and (d) allegations of respective fault contained in the claim.

**ARTICLE 12**  
**CHANGES**

**12.1 CHANGES.** Subcontractor acknowledges that the Change Order procedures contained within the Section 12 of Contract controls the procedures of changing the Subcontract and the issuance of Change Orders. Subcontractor shall comply with the procedures contained within Section 12 of the Contract when seeking a Change Order related to the Subcontract Work.

**12.1.1 SUBCONTRACT CHANGE.** A Subcontract Change is any approved change in the Subcontract Work within the general scope of the Subcontract including a change in the drawings, specifications or technical requirements of the Subcontract and/or a change in the Schedule of Work affecting the performance of the Subcontract.

**12.1.2 CHANGE ORDER.** When the Contractor orders in writing, the Subcontractor, without nullifying this Subcontract, shall make any and all changes in the Subcontract Work which are within the general scope of this Subcontract. Adjustments in the Subcontract Price or Subcontract Time, if any, resulting from such changes shall be set forth in a Change Order pursuant to the Subcontract Documents. No such adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Contractor. A Change Order is a written instrument prepared by the Contractor and signed by the Contractor and Subcontractor stating their agreement upon the change in the scope of the Subcontract Work, adjustment in the Subcontract Price and/or Subcontract Time. All change orders must be signed by an authorized Contractor representative. Subcontractor has risk of non-payment of work performed without a signed authorization.

**12.1.3 INCIDENTAL CHANGES IN THE SUBCONTRACT WORK.** The Contractor may direct the Subcontractor to perform incidental changes in the Subcontract Work which do not involve adjustments in the Subcontract Price or Subcontract Time. Incidental changes shall be consistent with the scope and intent of the Subcontract Documents. The Contractor shall initiate an incidental change in the Subcontract Work by issuing a written order to the Subcontractor. Such written orders shall be carried out promptly and are binding on the parties.

**12.1.4 CHANGE ORDERS BY OWNER.** Notwithstanding the provisions of 12.1.2 and 12.1.3 above, Change Orders issued by Owner and impacting the Subcontract Work or Subcontract Time shall receive adjustments in the Subcontract Price or Subcontract Time if, when, to the extent and in the form the Contractor receives a corresponding adjustment under the Contract. Subcontractor hereby waives any claim for any extension of time, increase, damages or additional compensation arising out of a Change Order initiated by the Owner beyond what it is entitled to receive pursuant to this Article 12.1.4.

**ARTICLE 13**  
**PAYMENT**

**13.1 GENERAL PROVISIONS**

**13.1.1 SCHEDULE OF VALUES.** The Subcontractor and Contractor have agreed on a Schedule of Values for the Subcontract Work, which is attached hereto as **Exhibit G – “Schedule of Values”** and will form the basis for the Subcontractor’s monthly payment applications. Each line item contained in the Schedule of Values has been assigned a monetary price (whole dollar only) such that the total of all such items shall equal the Subcontract Price. The Schedule of Values shall be developed in such detail as may be required by the Owner and, in addition thereto, the Contractor and Subcontractor may agree on the extent of the detail to be included in the Schedule of Values, which must be supported by such documents and proof as the Contractor may require.

**13.1.2 PAYMENT USE AND VERIFICATION.** The Subcontractor is required to pay for labor, materials and equipment used in the performance of the Subcontract Work through the most current period applicable to progress payments received from the Contractor. Reasonable evidence, satisfactory to the Contractor, may be required to show that all obligations relating to the Subcontract Work are current before releasing any payment due on the Subcontract Work. Without prejudice to any other rights specified herein, the Contractor reserves the right to issue joint checks to Subcontractor and creditors, suppliers and/or subcontractors, whether claiming a right to a mechanics lien or not. Contractor reserves the right to issue direct payments to Subcontractors and creditors, suppliers and/or subcontractors who may claim a right to a mechanics lien to avoid mechanics liens and deduct any costs from any amounts due from Contractor. The reservation of the right to make direct payments shall not constitute an obligation on the part of the Contractor to do so.

**13.1.3 SUBCONTRACTOR ASSIGNMENT OF RECEIVABLES.** The Subcontractor shall advise the Contractor of the existence of any assignments or security interest granted by the Subcontractor prior to entering into this Subcontract to any general creditor, bank, lender, surety, factor or other entity in receivables or monies that may become due the Subcontractor under this Subcontract. The Subcontractor shall give the Contractor prompt written notice if it intends to proceed to such assignments or security interests after entering into this Subcontract and no such assignment or security interest will be granted unless and until the Contractor consents, acting reasonably.

**13.1.4 PAYMENT NOT ACCEPTANCE.** Payment to the Subcontractor does not constitute or imply acceptance of any portion of the Subcontract Work.

**13.2 PROGRESS PAYMENTS.**

**13.2.1 APPLICATIONS.** Subcontractor’s progress payment applications (“**Payment Applications**”) shall be submitted not more frequently than monthly. Payment Applications shall be delivered to the Contractor’s Project office, itemized as per the Schedule of Values, supported by any other substantiating data as required in the Subcontract Documents for the Contractor’s payment applications and notarized, if required. The Contractor shall incorporate the approved

amount of the Subcontractor's progress payment application into the Contractor's payment application to the Owner for the same period and submit it to the Owner in a timely fashion.

**13.2.2 TIME OF APPLICATION.** For each progress payment period, the Subcontractor shall submit its Payment Application to the Contractor for the Subcontract Work performed to date no later than the day of each month noted on the front page as "Invoicing Date" or such other date that is notified by the Contractor to the Subcontractor from time to time.

**13.2.3 PARTIAL LIEN WAIVERS AND AFFIDAVITS.** As a prerequisite for payment, the Subcontractor shall provide, in a form satisfactory to the Owner and Contractor, partial lien or claim waivers in the amount of the application for payment and affidavits from the Subcontractor, and its subcontractors, material suppliers and vendors for the completed Subcontract Work. Such waivers may be conditional upon payment application submittal and unconditional upon receipt of payment. Lien waiver signatures must be by an officer of the company.

**13.2.4 REJECTION OF SUBCONTRACTOR'S PAYMENT APPLICATION.** The Contractor may reject a Subcontractor's payment application or nullify a previously approved Subcontractor's payment application, in whole or in part, as may be reasonably necessary to protect the Contractor from loss or damage based upon:

- (a) The Subcontractor's repeated failure to perform the Subcontract Work as required by the Subcontract;
- (b) Loss or damage arising out of or relating to the Subcontract and caused by the Subcontractor to the Owner, Contractor or others to whom the Contractor may be liable;
- (c) The Subcontractor's failure to properly pay for labor, materials, equipment or supplies furnished in connection with the Subcontract Work;
- (d) Rejected, non-conforming or defective Subcontract Work which has not been corrected in a timely fashion;
- (e) Reasonable evidence of delay in performance of the Subcontract Work such that the Subcontract Work will not be completed within the Subcontract Time, and that the unpaid balance of the Subcontract Price is not sufficient to offset the liquidated damages or actual damages that may be sustained by the Contractor as a result of the anticipated delay caused by the Subcontractor; or
- (f) Reasonable evidence demonstrating that the unpaid balance of the Subcontract Price is insufficient to cover the cost to complete the Subcontract Work.

The Contractor shall give written notice to the Subcontractor, at the time of disapproving or nullifying an application for payment, of the specific reasons therefore. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be made for amounts previously withheld.

**13.2.5 RETAINAGE / SECURITY.** The rate of retainage shall be the amount specified on the front page hereof. Subcontractor may not apply for retainage payment until forty (40) days

following the completion of the Subcontract Work. Completed Subcontract Work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the Subcontractor. For the purpose of this Article 13.2.4, satisfactory completion shall have been accomplished when: (a) the Subcontractor has fulfilled the Subcontract requirements and the requirements under the Subcontract Documents, including the submission of all submittals required by the Subcontract and Subcontract Documents; and (b) the Subcontract Work has been inspected and approved by the Contractor and the final quantities of the Subcontract Work have been determined and agreed upon.

**13.2.6 TIME OF PAYMENT.** Subject to Article 13.2.7, progress payments to the Subcontractor for performance of the Subcontract Work shall be made ten (10) days after the Contractor's receipt of payment from the Developer for the Subcontract Work.

**13.2.7 CONDITION PRECEDENT TO PAYMENT:** In their negotiations of this Subcontract, Subcontractor and Contractor have addressed the contingency that Developer may not pay Contractor for the Subcontract Work and Subcontractor has agreed and does hereby agree to accept the risk of nonpayment by Developer, for whatever reason, it being specifically understood that payment by Developer to Contractor for the Subcontract Work, whether for a monthly progress payment or final payment IS AN EXPRESS CONDITION PRECEDENT TO CONTRACTOR'S LIABILITY TO PAY SUBCONTRACTOR. The Subcontract Price includes an amount for assuming said risk of non-payment. Notwithstanding the foregoing, the condition precedent to payment shall not apply to the extent that non-payment by the Developer is due to the failure of the Contractor to meet its obligations to the Developer and the Subcontractor has no responsibility for this failure. Where such non-payment occurs, Contractor shall pay the amount of an approved invoice within 10 days after the date on which payment would have been received from Developer but for the Contractor's failure to meet its obligations.

### **13.3 FINAL PAYMENT.**

**13.3.1 APPLICATION.** Upon completion of the Subcontract Work by the Contractor, and upon the Subcontractor furnishing evidence of fulfillment of the Subcontractor's obligations in accordance with the Subcontract Documents, the Contractor shall incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner without delay, or notify the Subcontractor if there is a delay and the reasons therefore.

**13.3.2 REQUIREMENTS.** Before the Contractor shall be required to incorporate the Subcontractor's application for final payment into the Contractor's next application for payment to the Owner, the Subcontractor shall furnish to the Contractor:

- (a) If required by the Subcontract, an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Subcontract Work, for which the Owner, its property, the Contractor or the Contractor's surety might in any way be liable, have been paid or otherwise satisfied;
- (b) A conditional mechanic's lien release releasing all of the Subcontractor's mechanic's lien rights on the Project upon receipt of final payment;

- (c) Consent of the Subcontractor's surety to final payment, if required;
- (d) Satisfaction of close-out procedures as may be required by the Subcontract;
- (e) Certification that insurance required by the Subcontract remains in effect beyond final payment and will not be canceled or allowed to expire without at least thirty (30) calendar days' written notice to the Contractor, unless a longer period is stipulated in the Subcontract Documents; and
- (f) Other data, if required by the Owner, such as receipts, releases, and waivers of liens effective upon payment to the extent and in such form as may be designated by the Owner.

Acceptance of final payment by the Subcontractor shall constitute a waiver of claims by the Subcontractor except those previously made in writing and identified by the Subcontractor as unsettled at the time of final application for payment.

### **13.4 PREVAILING WAGES.**

#### **13.4.1 PAYMENT**

The Subcontractor shall pay or cause to be paid to all applicable workers employed by it or its sub-subcontractors to perform the Subcontract Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 3 to the Contract and appended as Exhibit J hereto. The Subcontractor shall comply and cause its sub-subcontractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Subcontracts at any tier with the Owner or Governmental Entities. Any issue between the Contractor or the Subcontractor, and any affected worker relating to any alleged violation of Section 2258.023 of the Texas Government Code that is not resolved before the 15th day after the date the Owner makes its initial determination under Section 2258.052 of the Texas Government Code (as to whether good cause exists to believe that a violation occurred) shall be submitted to binding arbitration in accordance with the Texas General Arbitration Act, Chapter 171 of the Civil Practice and Remedies Code.

**13.4.2 INCLUSION IN SUBCONTRACTS** The Subcontractor shall comply and cause its Sub-subcontractors, other than the Owner or Governmental Entities acting as subcontractors, to comply with all applicable Law regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.

### **13.5 PROMPT PAYMENT TO SUB-SUBCONTRACTORS.**

**13.5.1 PROMPT PAYMENT.** Subcontractor shall pay each of its subcontractors for work satisfactorily performed within 10 days after receiving payment from the Contractor for the work satisfactorily performed by the subcontractor and pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. For the purpose of this Article 13.5.1, satisfactory completion is accomplished when (a) the subcontractor has

fulfilled the requirements of both this Subcontract and the subcontract for the subcontracted work, including the submittal of all information required by the sub-subcontract documents and the Owner; and (b) the work done by the subcontractor has been inspected and approved by Owner and the final quantities of the subcontractor's work have been determined and agreed upon. The foregoing payment requirements apply to all tiers of subcontractors and shall be incorporated into all subcontracts.

## **ARTICLE 14**

### **RECOURSE BY CONTRACTOR**

#### **14.1 FAILURE OF PERFORMANCE.**

**14.1.1 NOTICE TO CURE AND TERMINATION FOR DEFAULT.** The Subcontractor is in default of the Subcontract if it: (a) fails to fully and punctually perform any of the terms and conditions of the Subcontract; (b) refuses or fails to supply enough properly skilled workers or materials to fulfill its duties to perform the Subcontract Work; (c) fails to make prompt payment to sub-subcontractors, laborers or material suppliers; (d) fails to strictly abide by laws, ordinances, rules, regulations or public authorities; (e) is no longer in business, becomes insolvent, is unable to fulfill its legal, financial, or business obligations, or makes a transfer in fraud of creditors or makes assignment for the benefit of creditors; (f) abandons or notifies Contractor of intent to abandon, actually or constructively; (g) is guilty of a material breach of any provision of the Subcontract Documents; or (h) fails to provide the surety bonds or the required insurance coverage and certificates or acts fraudulently in submitting coverage or certificates. If the Subcontractor fails within five (5) working days after written notification to commence and continue satisfactory correction of such default, with diligence and promptness, then the Contractor without prejudice to any other rights or remedies (including demanding payment and performance under the surety bonds), shall have the right to any or all of the following remedies:

- (a) supply each number of workers and quantity of materials, equipment and other facilities as the Contractor deems necessary for the satisfactory correction of such default, which the Subcontractor has failed to complete or perform after the aforesaid notice, and charge the cost thereof to the Subcontractor, who shall be liable for the payment of same including reasonable overhead, profit and attorneys' fees;
- (b) Order the Subcontractor to withdraw the site immediately;
- (c) Take assignment of all or some of the subcontracts and supply agreements of Subcontractor for the Project, or to direct the Subcontractor to terminate all or some of them, (and Subcontractor will include the obligation to accept such assignment and termination in every agreement with all of its subcontractors and suppliers, of every tier);
- (d) Contract with one or more additional contractors, to perform such part of the Subcontract Work as the Contractor shall determine will provide the most expeditious correction of the default and charge the cost thereof to the Subcontractor;

- (e) Withhold payment of moneys due the Subcontractor in accordance with Article 13.2.3 of this Subcontract;
- (f) In the event of an emergency affecting the safety of persons or property, the Contractor may proceed to commence and continue satisfactory correction of such default, without first giving two (2) working days' written notice to the Subcontractor, but shall give prompt written notice of such action to the Subcontractor; and
- (g) Terminate this Subcontract or a portion thereof and may take possession on site of all materials, equipment, tools, and machinery owned by Subcontractor and finish the Subcontract Work by whatever method Contractor deems expedient. Subcontract shall not be entitled to receive further payment until the Subcontract Work is finished. If such costs exceed the unpaid balance of the Subcontract Price, Subcontractor shall pay the difference to the Contractor upon demand. Contractor shall not be required to assume any of Subcontractor's outstanding obligations. Warranties and obligations set forth herein performed by Subcontractor in no manner shall be altered, limited or extinguished as a result of such termination.

#### **14.1.2 AUTOMATIC TERMINATION AND TERMINATION FOR CONVENIENCE.**

**14.1.2.1** The Contractor may, at any time, terminate the Subcontract, in whole or in part, for the Contractor's convenience and without cause. Upon receipt of written notice from the Contractor of such termination for the Contractor's convenience, the Subcontractor shall: (a) cease operations as directed by the Contractor in the notice; (b) take actions necessary, or that the Contractor may direct, for the protection and preservation of the Subcontract Work; (c) except for Subcontract Work directed to be performed prior to the effective date of termination stated in the notice, terminate or assign to Contractor all existing sub-subcontracts and purchase orders and enter into no further subcontracts and purchase orders; (d) proceed to complete the performance of Subcontract Work not terminated; and (e) take actions that may be necessary, or that the Contractor may direct, for the protection and preservation of the terminated Subcontract Work.

**14.1.2.2** Subject to Articles 16.1(c) and 16.1(d), this Subcontract shall terminate automatically on termination of the Contract. In case of such termination, the Subcontractor shall be entitled to receive payment for Subcontract Work executed but only to the extent that the Contractor has received equivalent payment from the Owner for such Subcontract Work. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except for the Subcontractor's obligations to perform corrective and/or warranty work with respect to the portion of the Subcontract Work completed by the Subcontractor prior to termination and to indemnify the Contractor as provided for in the Subcontract Documents for matters arising prior to the date of termination.

**14.1.2.3** Except as provided in Article 14.1.2.2, in case of termination for the Contractor's convenience, the Subcontractor shall be entitled to receive payment for Subcontract Work executed, but shall not be entitled to payment for overhead and profit on the Subcontract Work not executed or to any payment which constitutes consequential damages on account of the termination or partial termination. In the event of such termination, the Contractor shall pay as the sole amount due to the Subcontractor in connection with this Project an amount equal to all sums due for the

Subcontract Work performed to date including allowable profit and overhead thereon up to the date such written notice of termination is received by the Subcontractor (except retainage sums shall not be paid prior to thirty (30) days following the date of termination) plus properly substantiated and previously approved directly incurred demobilization costs. Upon receipt of such payment, the parties hereto shall have no further obligations to each other except for the Subcontractor's obligations to perform corrective and/or warranty work with respect to the portion of the Subcontract Work completed by the Subcontractor prior to termination and to indemnify the Subcontractor as provided for in the Subcontract Documents for matters arising prior to the date of termination.

**14.1.2.4** The Subcontractor shall include the provisions contained in this Article 14.1.2 in its sub-subcontracts and in all lower tier subcontracts regarding terminations for convenience, allowing such termination rights and obligations to be passed through to the sub-subcontractors and establishing terms and conditions relating thereto, including procedures for determining the amount payable to the sub-subcontractor upon a termination, consistent with this Article.

**14.1.3 NONWAIVER AND OFFSET.** Any failure by Contractor at any time to enforce the strict performance of any terms shall not affect the Contractor's right to avail itself of all remedies for subsequent breach of terms. Subcontractor's rights are subject to the right of Contractor to offset any claims it has against Subcontractor whether or not arising under this Subcontract including attaching all contracts and amounts on multiple construction projects to satisfy or remedy one project.

## **ARTICLE 15** **DISPUTE RESOLUTION**

**15.1 DISPUTE RESOLUTION.** The Subcontractor: (a) agrees to submit any Claim, dispute, disagreement, or controversy between the Subcontractor and the Contractor concerning their respective rights and obligations under the Subcontract Documents including concerning any alleged breach or failure to perform and remedies ("**Subcontractor Dispute(s)**") to the Contractor in a proper form and in sufficient time to allow processing by the Contractor in accordance with section 19 of the Contract; (b) agrees to be bound by the terms of section 19 of the Contract to the extent applicable to Subcontractor Disputes; (c) agrees that, to the extent a Subcontractor Dispute is involved, completion of all steps required under section 19 of the Contract shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by law, including institution of a lawsuit against the Contractor; (d) agrees that any Subcontractor Dispute brought against a Surety, that also is actionable against the Owner through the Contractor, shall be stayed until completion of all steps required under this section 15.1; and (e) agrees that the existence of a dispute resolution process for Disputes involving Subcontractor Disputes shall not be deemed to create any claim, right, or cause of action by any Subcontractor against the Owner. Subcontractors shall, at all times, have rights and remedies only against the Contractor. This section applies to disputes and Claims for any sub-subcontractor at any tier.

**15.2 CONTINUING WORK.** At all times during the dispute resolution procedures set forth in this Subcontract and the Contract, the Subcontractor shall continue with the performance of the Subcontract Work and its obligations, including any disputed Subcontract Work or obligations, diligently and without delay, in accordance with this Subcontract, except to the extent enjoined by

order of a court or otherwise approved by the Contractor in its discretion. The Subcontractor acknowledges that it shall be solely responsible for the results of any delaying actions or inactions taken during the pendency of resolution of a Dispute relating to the Subcontract Work even if the Subcontractor's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Subcontract Work, the Contractor and Subcontractor shall continue to comply with all provisions of the Subcontract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

**15.3 PASS THROUGH CLAIMS.** In the event of any Dispute or Claim between the Contractor and the Owner which directly or indirectly involves the Subcontract Work or in the event of any Subcontractor Dispute or Claim between the Contractor and Subcontractor caused by or arising out of conduct for which the Owner may be responsible or which is addressed in the Contract, the Subcontractor agrees to be bound to the Contractor and the Contractor agrees to be bound to the Subcontractor to the same extent that the Contractor is bound to the Owner by the terms of the Contract and by any and all procedures and resulting decisions, findings, determinations, or awards made thereunder by the person or persons having jurisdiction thereunder pursuant to the Contract. The Contractor's determination as to whether any Subcontractor Claim arises from the Contract is one for which the Owner may be responsible shall be final and conclusive. The Subcontractor shall pay or reimburse the Contractor for all expenses, costs, and attorneys' fees incurred in connection with the Contractor's prosecuting or defending of the Subcontractor Disputes and Claims related to the Subcontractor Work with the Subcontractor providing full cooperation, otherwise the Subcontractor shall have full responsibility for the preparation of its Claims and shall bear all expenses thereof, including attorneys' fees. If any Subcontractor Dispute or Claim is prosecuted or defended by the Contractor together with Disputes or Claims of the Contractor's own and the Subcontractor is not directly a party, the Subcontractor agrees to cooperate fully with the Contractor and to furnish documents, statements, and other information required by the Contractor for such purpose and shall pay or reimburse the Contractor for all expenses, costs, and attorneys' fees incurred in connection therewith. The Contractor shall be liable to the Subcontractor only to the extent of the amount, if any, actually awarded is a result of the dispute resolution process and such amount when received by the Contractor from the Owner shall satisfy and discharge the Contractor from any and all liability to the Subcontractor for or on account of the acts or omissions of the Owner.

**15.4 DISPUTES THAT DO NOT INVOLVE THE OWNER.** For disputes and claims between Contractor and Subcontractor which are not related to, or do not involve a Claim or a Dispute with the Owner, the Parties agree to attempt amicable resolution through non-binding mediation. The Parties shall use diligent efforts to convene and conclude mediation proceedings within thirty (30) days after notice of such dispute or claim. If any such disputes or claims are not resolved during this mediation period, either Party may refer the dispute or claim to binding arbitration by a single neutral arbitrator under the then prevailing JAMS arbitration rules. The place of such arbitration shall be Dallas, Texas unless the Parties agree otherwise.

## **ARTICLE 16**

### **CONTRACT REQUIRED PROVISIONS**

**16.1** All provisions required by the Contract to be included in this Subcontract are incorporated herein by reference, including, without limitation, each of the provisions set forth below. The

Subcontractor shall comply with all such provisions, and the Subcontractor shall ensure that all provisions required to be included in any subcontracts are included in such sub-subcontracts and that each of its sub-subcontractors agree to comply with such provisions.

- (a) The Subcontractor shall perform the Subcontract Work in accordance with a standard of professional responsibility and commercial practice equal to the requirements of the Subcontract Documents and Good Industry Practice for work of similar scope and scale and in accordance with all applicable provisions of the Contract.
- (b) The Subcontractor agrees to carry out the Subcontract Work in accordance with the Contract, the Subcontract Documents, Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.
- (c) Without cost to the Contractor or the Owner, the Subcontractor expressly permits assignment to the Owner or its successor, assign or designee of all of the Contractor's rights under this Subcontract, contingent only upon delivery of request from the Owner following termination of the Contract, allowing the Owner or its successor, assign or designee to assume the benefit of the Contractor's rights with liability only for those remaining obligations of the Contractor accruing after the date of assumption, such assignment to include the benefit of all of the Subcontractor's warranties, indemnities, guarantees and professional responsibility.
- (d) Any acceptance of assignment of this Agreement by the Owner or its successor, assign or designee shall not operate to make the assignee responsible or liable for any breach of this Subcontract by the Contractor or for any amounts due and owing under this Subcontract for work or services rendered prior to assumption (but without restriction on the Subcontractor's rights to suspend work or demobilize due to the Contractor's breach).
- (e) The Subcontractor expressly covenants to recognize and attorn to the Owner, upon receipt of notice from the Owner that it has exercised its rights under the Contract, without necessity for consent or approval from the Contractor or to determine whether the Owner validly exercised its rights, and the Contractor hereby covenants to waive and release any claim or cause of action against the Subcontractor arising out of or relating to its recognition and attornment in reliance on any such notice.
- (f) The Subcontractor may not assign this Subcontract to any Person other than the Owner (or its assignee) without the Contractor's prior consent.
- (g) The Subcontractor will: (a) maintain usual and customary books and records for the type and scope of operations of business in which it is engaged; (b) permit audit thereof with respect to the Project or the Subcontract Work by each of Contractor and the Owner pursuant to section 20.5 of the Contract; (c) provide progress reports to the Contractor appropriate for the type of work it is performing sufficient to enable the Contractor to provide the reports it is required to furnish the Owner under the Contract; and (d) the Contractor represents and warrants the completeness and accuracy of all information it or its agents provide in connection with Owner audits.

- (h) The Subcontractor acknowledges that the Contractor has the right to terminate this Agreement in whole or in part upon any Termination for Convenience of the Contract without liability of the Contractor or the Owner for the Subcontractor's lost profits or business opportunity.
- (i) The Subcontractor will participate in meetings between the Contractor and the Owner, upon the Owner's request, concerning matters pertaining to this Subcontract or the Subcontract Work; provided, however, that all direction to the Subcontractor shall be provided by the Contractor, and provided further that nothing in this clause shall limit the authority of the Owner to give such direction or take such action which, in its sole opinion, is necessary to remove an immediate and present threat to the safety of life or property.
- (j) The Subcontractor will give evidence in any dispute resolution proceeding pursuant to section 19 of the Contract, if such participation is requested by either the Contractor or the Owner.
- (k) The Subcontractor acknowledges that all Liens, claims and charges of the Subcontractor and its sub-subcontractors at any time shall not attach to any interest of the Owner in the Project or the Project ROW.
- (l) The Subcontractor covenants, which covenant shall survive termination of this Subcontract, to promptly execute and deliver to Owner a new contract between the Subcontractor and the Owner on the same terms and conditions as this Subcontract, in the event: (a) this Subcontract is rejected by the Contractor in bankruptcy or otherwise wrongfully terminated by the Contractor and (ii) the Owner delivers request for such new contract following termination or expiration of the Contract.
- (m) The Subcontractor is not, and will not enter into any subcontracts with any Person that is, debarred or suspended from submitting bids by any agency of the State.
- (n) The Parties acknowledge and agree that they may not amend any of the foregoing provisions in this section 16.1 without the prior consent of the Owner.

## **ARTICLE 17**

### **REPRESENTATIONS AND WARRANTIES OF THE SUBCONTRACTOR**

- 17.1** The Subcontractor represents, warrants, and covenants that:
- (a) During all periods necessary for the performance of the Subcontract Work, the Subcontractor and its Subcontractors will maintain all required authority, license status, professional ability, skills and capacity to perform the Subcontract Work in accordance with the requirements contained in the Subcontract Documents.
  - (b) As of the Effective Date, the Subcontractor has evaluated the constraints affecting design and construction of the Project with respect to the Subcontract Work, including the Schematic ROW limits as well as the conditions of TxDOT-Provided Approvals, and has reasonable grounds for believing and does believe that the portion of the Project to which the Subcontract Work relates can be built within such constraints.

- (c) The Subcontractor has evaluated the feasibility of performing the Subcontract Work within the Completion Deadlines and for the Subcontract Price, accounting for constraints affecting the Project, and has reasonable grounds for believing and does believe that such performance is feasible and practicable.
- (d) Except as to parcels that the Owner lacked title or access to prior to the execution of the Subcontract, the Subcontractor shall have, prior to the execution of the Subcontract and in accordance with Good Industry Practice, examined or had the opportunity to examine the Site and surrounding locations, performed or had the opportunity to conduct inspections and tests and to perform appropriate field studies and geotechnical investigations of the Site, investigated and reviewed available public and private records, and undertook other activities sufficient to familiarize itself with surface conditions and subsurface conditions, including the presence of Utilities, Hazardous Materials, contaminated groundwater, archeological, paleontological and cultural resources, and Threatened or Endangered Species, affecting the Site or surrounding locations; and as a result of such opportunity for review, inspection, examination and other activities the Subcontractor is familiar with and accepts the physical requirements of the Subcontract Work, subject to the Subcontractor's rights to seek relief under this Subcontract. Before commencing any Subcontract Work on a particular portion or aspect of the Project, the Subcontractor shall verify all governing dimensions of the Site and shall examine all adjoining work (including Adjacent Work) that may have an impact on such Subcontract Work. The Subcontractor shall ensure that any design documents and construction documents furnished as part of the Subcontract Work accurately depict all governing and adjoining dimensions.
- (e) The Subcontractor has familiarized itself with the requirements of any and all applicable Laws and the conditions of any required Governmental Approvals prior to entering into this Subcontract. The Subcontractor shall be responsible for complying with the foregoing at its sole cost and without any additional compensation or time extension on account of such compliance, regardless of whether such compliance would require additional time for performance or additional labor, equipment or materials not expressly provided for in the Subcontract Documents. As of the Effective Date, the Subcontractor has no reason to believe that any Governmental Approval required to be obtained by the Subcontractor will not be granted in due course and thereafter remain in effect so as to enable the Subcontract Work to proceed in accordance with the Subcontract Documents.
- (f) All Subcontract Work furnished by the Subcontractor shall be performed by or under the supervision of Persons who hold all necessary and valid licenses to perform the Subcontract Work in the State, by personnel who are careful, skilled, experienced and competent in their respective trades or professions, who are professionally qualified to perform the Subcontract Work in accordance with the Subcontract Documents and who shall assume professional responsibility for the accuracy and completeness of the Design Documents, Construction Documents and other documents prepared or checked by them.
- (g) As of the Effective Date, the Subcontractor is a [limited liability company] duly organized and validly existing under the laws of the State of [Texas] with all requisite power and all required licenses to carry on its present and proposed obligations under the Subcontract Documents and has full power, right and authority to execute and deliver the Subcontract

Documents to which the Subcontractor is (or will be) a party and to perform each and all of the obligations of the Subcontractor provided for herein and therein.

- (h) The Subcontractor is duly qualified to do business, and is in good standing, in the State of Texas as of the Effective Date, and will remain in good standing throughout the term of the Subcontract and for as long thereafter as any obligations remain outstanding under the Subcontract Documents.
- (i) The execution, delivery and performance of the Subcontract Documents and the sub-subcontracts to which the Subcontractor is (or will be) a party have been (or will be) duly authorized by all necessary corporate action of the Subcontractor; each person executing the Subcontract Documents and the sub-subcontracts on behalf of the Subcontractor has been (or at the time of execution will be) duly authorized to execute and deliver each such document on behalf of the Subcontractor; and the Subcontract Documents and the sub-subcontracts have been (or will be) duly executed and delivered by the Subcontractor.
- (j) Neither the execution and delivery by the Subcontractor of the Subcontract Documents or the sub-subcontracts to which the Subcontractor is (or will be) a party, nor the consummation of the transactions contemplated hereby or thereby, is (or at the time of execution will be) in conflict with or has resulted or will result in a default under or a violation of the governing instruments or organizational documents of the Subcontractor or a breach or default under any indenture or loan or credit agreement or other material agreement or instrument to which the Subcontractor is a party or by which its properties and assets may be bound or affected.
- (k) Each of the Subcontract Documents and the sub-subcontracts to which the Subcontractor is (or will be) a party constitutes (or at the time of execution and delivery will constitute) the legal, valid and binding obligation of the Subcontractor, enforceable against the Subcontractor, in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and the general principles of equity.
- (l) As of the Effective Date, there is no action, suit, proceeding, investigation or litigation pending and served on the Subcontractor which challenges the Subcontractor's authority to execute, deliver or perform, or the validity or enforceability of, the Subcontract Documents or the sub-subcontracts to which the Subcontractor is a party, or which challenges the authority of any of the Subcontractor's officials that are executing the Subcontract Documents or the sub-subcontracts; and the Subcontractor has disclosed to the Contractor prior to the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which the Subcontractor is aware.

**ARTICLE 18**  
**COMPLIANCE WITH LAWS**

**18.1 COMPLIANCE WITH LAWS.** The Subcontractor agrees to be bound by, and at its own cost, comply with all federal, state and local laws, ordinances, standards, rules and regulations

applicable to the Subcontract Work including, but not limited to, all applicable standards, rules, laws, regulations, and federal and State orders related to federal and State labor laws, occupational safety, health standards, equal employment opportunity, minority business enterprises, women's business enterprises, disadvantage business enterprises ("DBE"), Environmental Laws, Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended, and all other laws with which the Subcontractor must comply according to the Subcontract Documents. The Subcontractor shall be liable to the Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by the Subcontractor, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.

**18.1.1** The Subcontractor shall comply with all federal requirements applicable to transportation projects that receive federal-aid funding or other federal funds or credit, including those requirements set forth in Exhibit 3 of the Contract and appended as Exhibit J hereto. The Subcontractor shall deliver any certification required pursuant to such federal requirements to Contractor. In the event of any conflict between any applicable federal requirements referenced above and the other requirements of the Subcontract Documents, the federal requirements shall prevail, take precedence, and be in force over and against any such conflicting provisions.

**18.1.2** The Owner's DBE Special Provisions for Non-Traditional Contracts, applicable to the Project, are set forth in Exhibit 6 of the Contract and appended as Exhibit L hereto. The purpose of the DBE Special Provisions for Non-Traditional Contracts is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The Subcontractor shall comply with all applicable requirements set forth in the DBE Special Provisions for Non-Traditional Contracts and the Owner's Disadvantaged Business Enterprise Program applicable to comprehensive development agreement projects and adopted pursuant to 49 CFR Part 26, and the provisions in the Contractor's approved DBE Performance Plan, set forth in Exhibit 7 of the Contract and appended as Exhibit M hereto. The approved overall DBE participation goal for the Project, including construction and professional services, is established as 9% of the D&C Price. The Subcontractor shall exercise good faith efforts to achieve such DBE participation goal in the Subcontract Work for the Project through implementation of the Contractor's Owner-approved DBE Performance Plan related to the Subcontract Work. The Subcontractor shall include provisions to effectuate the requirements of this Article in every sub-subcontract (including purchase orders and in every sub-subcontract of any Subcontractor related entity for the Subcontract Work), and shall require that they be included in all sub-subcontracts at lower tiers, so that such provisions will be binding upon each sub-subcontractor. The Subcontractor shall not cancel or terminate any sub-subcontract with a DBE firm except in accordance with all requirements and provisions applicable to cancellation or termination of subcontracts with DBE firms set forth in the DBE Special Provisions for Non-Traditional Contracts in Exhibit 6 of the Contract and appended as Exhibit L hereto.

**18.1.3** The Subcontractor shall not, and shall cause its sub-subcontractors to not, discriminate on the basis of race, color, national origin, sex, age or handicap in the performance of the Subcontract Work under the Subcontract Documents. The Subcontractor shall carry out, and shall cause its sub-subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by the Subcontractor to carry out these requirements is a material breach of this Subcontract, which may result in the termination of this Subcontract and the Contract or such other remedy as the

Contractor deems appropriate (subject to the Subcontractor's rights to notice and opportunity to cure set forth in this Subcontract). The Subcontractor shall include the language in this Article in every sub-subcontract (including purchase orders and in every subcontract of any Subcontractor related entity for the Subcontract Work), and shall require that they be included in all sub-subcontracts at lower tiers, so that such provisions will be binding upon each sub-subcontractor. The Subcontractor confirms for itself and all sub-subcontractors that the Subcontractor and each sub-subcontractor has an equal employment opportunity policy ensuring equal employment opportunity without regard to race, color, national origin, sex, age, religion, or handicap; and that the Subcontractor and each sub-subcontractor maintains no employee facilities segregated on the basis of race, color, religion, or national origin. The Subcontractor shall comply with all applicable laws relating to equal employment opportunity and nondiscrimination, including those set forth in Exhibit 3 of the Contract and appended as Exhibit J hereto, and shall require its sub-subcontractors to comply with such provisions.

**ARTICLE 19**  
**COUNTERPARTS**

This Subcontract may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. The Parties may exchange signed counterparts or signature pages by electronic means.

*[Signature page follows]*

**IN WITNESS WHEREOF** the parties hereto have made and executed this Subcontract, the day and year first above written.

**CONTRACTOR**

Flatiron/Dragados, LLC

Flatiron/Dragados, LLC

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SUBCONTRACTOR**

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

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

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

Date: \_\_\_\_\_

**EXHIBIT A**

**SUBCONTRACTOR PRICE SCHEDULE**

Attached.

DRAFT

**EXHIBIT B**

**SCOPE OF WORK**

1. **Scope of Work:**
2. **Project Execution Plan:**
3. **Deliverables:**

DRAFT

**EXHIBIT C**  
**SCHEDULE OF WORK**

Attached

DRAFT

**EXHIBIT D**

**Contractor Controlled Insurance Program (CCIP) and Sample Insurance Certificate  
(COI)**

DRAFT

## PART 1 – CCIP

**1. Overview.** The Contractor has arranged with Aon Risk Services Northeast, Inc., (the “**CCIP Administrator**”) to provide a Contractor Controlled Insurance Program (“**CCIP**”). The CCIP is more fully described in the Contractor Controlled Insurance Program Insurance Manual (the “**CCIP Insurance Manual**”) for this project. Parties performing labor or providing services at the Project site are eligible to enroll in the CCIP unless they are an Excluded Party, as defined below. The CCIP will provide certain insurance coverages to Enrolled Parties, including commercial general liability insurance, workers’ compensation insurance, employer’s liability insurance and excess liability insurance in connection with the performance of the Work (the “**CCIP Coverages**”). Participation in the CCIP is mandatory for eligible subcontractors directed by Contractor to enroll in the CCIP. Eligible subcontractors must follow the enrollment procedures set forth in this Exhibit and in the CCIP Insurance Manual.

The amounts and terms of coverage provided through the CCIP are determined by the CCIP insurance policies. In the event any provision of this Exhibit, the CCIP Insurance Manual, or any other Contract Document conflicts with the CCIP insurance policies, the provisions of the CCIP insurance policies shall govern.

**2. Enrolled Parties and their Insurance Obligations.** The following are Enrolled Parties: Contractor, and all eligible Subcontractors of all tiers that enroll in the CCIP and receive confirmation of enrollment from the CCIP Administrator. Owner will be an additional insured on the CCIP Commercial General Liability and Excess insurance. A party performing labor or providing services at the Project site is eligible to enroll in the CCIP, unless such party is an Excluded Party.

In addition to their CCIP Coverages, Enrolled Parties shall obtain and maintain, and shall require each of their Subcontractors of all tiers to obtain and maintain, the insurance coverage specified in Section 7 below.

- 3. Excluded Parties and their Insurance Obligations.** The following are Excluded Parties:
- a. Hazardous materials remediation, removal and/or transport companies and their consultants, including but not limited to asbestos abatement, and lead abatement contractors;
  - b. Architects, surveyors, engineers, and soil testing engineers, and their consultants that do not perform any actual labor at the Project site;
  - c. Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others that merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons to or from the Project site that do not perform any actual labor on the Project site;
  - d. Subcontractors who do not perform any actual labor on the Project site; and
  - e. Any parties or entities not specifically identified in this Exhibit, or such parties or entities excluded by Contractor, in its sole direction, even if they are otherwise eligible.

Excluded Parties and parties no longer enrolled in or covered by the CCIP shall obtain and maintain, and shall require each of their Subcontractors of all tiers to obtain and maintain, the insurance coverage specified in Section 7 below. In the event the CCIP policy period ends, is cancelled or otherwise terminated, Enrolled Parties may continue to have completed operations coverage under the CCIP General Liability insurance. Enrolled Parties shall review the terms and conditions of the CCIP to determine what coverage is available to them. In the event any Enrolled Party returns to the Project site for any reason after the CCIP policy period has ended, such party must furnish its own insurance coverage for all liability associated with its return to the Project site.

**4. Contractor's Insurance Obligations.** Contractor shall pay the costs of premiums for the CCIP Coverages. Contractor will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits, or otherwise. **Contractor promises Enrolled Parties no insurance other than what is actually provided per the terms of the CCIP policies. Enrolled Parties shall review the CCIP insurance policies themselves and not rely on any representation by Contractor or CCIP Administrator as to such insurance.** Contractor's furnishing of CCIP Coverages shall in no way relieve or limit, or be construed to relieve or limit any Subcontractor of any responsibility, liability, or obligation imposed by the Contract Documents, the CCIP insurance policies, or by law, including without limitation any indemnification obligations which any Subcontractor owes to Contractor or Owner thereunder. Contractor reserves the right at its option, without obligation to do so, to furnish other insurance coverages of various types and limits.

**5. Subcontractor's CCIP Obligations.** Each Subcontractor shall:

- (a) Fully comply with all of the enrollment, administrative, claims, safety, insurance, and all other requirements outlined in this Exhibit, CCIP Insurance Manual, and the CCIP Insurance Policies, or elsewhere in the Contract Documents.
- (b) Incorporate the terms of this Exhibit in all lower tier subcontracts and ensure that all their Subcontractors, in turn, incorporate the terms of this Exhibit in any of their lower tier subcontracts.
- (c) Provide to each of its Subcontractors a copy of the CCIP Insurance Manual and ensure each such Subcontractors' compliance with the provisions of the CCIP Insurance Policies, the CCIP Insurance Manual, this Exhibit, and the Contract Documents. The failure of a Subcontractor to provide each of its lower-tier Subcontractors with a copy of the same shall not relieve Subcontractor, or any such lower-tier Subcontractors, of any of the obligations contained therein.
- (d) Acknowledge, and require all of its lower-tier Subcontractors to acknowledge, in writing, that Contractor and the CCIP Administrator are not agents, partners, or guarantors of the insurance companies providing the CCIP Coverages (each such insurer is an "CCIP Insurer"), that neither the Contractor nor the CCIP Administrator is responsible for any claims or disputes between or among any Subcontractor and any CCIP Insurer(s), and that neither Contractor nor the CCIP

Administrator guarantees the solvency, or the availability of limits, of any CCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the CCIP Coverages that any Subcontractor requires for its or their own protection, or that is required by applicable laws or regulations, shall be such Subcontractor's sole responsibility and expense, and shall not be billed to Contractor.

- (e) Comply, and require all of its Subcontractors to comply, with CCIP Administrator's instructions for enrollment in, and administration of, the CCIP, and timely provide Contractor or CCIP Administrator all documents or information requested in connection with enrollment or administration of the CCIP, and as required by the CCIP Insurance Manual and/or the CCIP policies.

**6. Bid Net of Insurance.** *Each CCIP-eligible Subcontractor shall bid the Project 'net' of insurance costs due to eligibility for the CCIP. Such Subcontractors shall exclude the Cost of CCIP Coverages from its bid, and ensure that each of their Subcontractors exclude the Cost of CCIP Coverages from their respective bids. The "Costs of CCIP Coverages" is defined as the amount of each Subcontractor's (and its subcontractors') reduction in insurance costs due to participation in the CCIP Coverages. The Costs of CCIP Coverages includes reduction in insurance premiums, related taxes and assessments, markup on the insurance premiums and losses retained through the use of the self-funded program, self-insured retention, or deductible program. The Cost of CCIP Coverages must include expected losses within any retained risk. Each CCIP-eligible Subcontractor must deduct the Cost of CCIP Coverages for all its Subcontractors in addition to its own Cost of CCIP Coverages. Change orders must also be priced to exclude the Cost of CCIP Coverages.*

- 7 Insurance Required from Enrolled Parties and Excluded Parties.** Before commencing the Work, Subcontractors of every tier shall provide the insurance coverages described in Section 7 from insurance companies satisfactory to Contractor and shall be maintained until completion and final acceptance of the Work, or as otherwise stated herein. Contractor shall have the right, without limitation, to reject any insurance company selected by a Subcontractor that has an A.M. Best rating of less than A"VIII" or Standard and Poor's rating of less than AA or a Moody's rating of less than Aa. In the event a Subcontractor employs any of its own Subcontractors, it shall ensure that such Subcontractors comply with all of the insurance requirements in this Exhibit.

**7.1 Minimum Coverages Required.**

The CCIP Coverages include only certain types of coverage, for a specific period of time, and at a specifically defined location(s).

**Enrolled Parties** must provide the insurance as set forth below for all operations not included in the CCIP Coverages.

**Excluded Parties** or any party not enrolled in the CCIP must provide the insurance as set forth below for all operations.

- (a) **Comprehensive Business/Automobile Liability Insurance.** This insurance shall be on a current ISO form or equivalent and apply on an “any auto” basis, including all vehicles used in connection with the Work, and provide annual limits of at least **\$1,000,000** per occurrence - bodily injury and property damage combined including uninsured and underinsured motorist coverage and medical payment protection. Coverage shall include, without limitation, loading and unloading.
- (b) **Workers’ Compensation** (including but not limited to coverage or endorsements for Occupational Disease Benefits, Voluntary Compensation and Disability benefits, Jones Act and U.S. Longshoremen's and Harbor Worker's Act, if applicable) – Statutory Limits for the state(s) in which the Work will take place. Self-insurance is not acceptable.
- (c) **Employer’s Liability** – This insurance shall have limits of at least **\$1,000,000** (per bodily injury/disease and annual aggregate).
- (d) **Commercial General Liability Insurance.** This insurance shall be provided by a current ISO occurrence form policy, including, without limitation, coverage for damages because of bodily injury, property damage and personal and advertising injury. This insurance shall include, without limitation, coverage for the products-completed operations hazard.

This insurance shall have annual limits of at least **\$1,000,000** combined single limit for bodily injury and property damage, each occurrence. This insurance shall be maintained from commencement of the Work until not less than **10 years** after **substantial completion of the Project**.

*This insurance shall include separate limits per occurrence, dedicated to the Project.*

- (e) **Umbrella and Excess Liability.** This insurance shall provide excess annual liability limits of at least **\$5,000,000** in the form of an umbrella or excess liability policy. This insurance shall follow form to the Employer’s Liability, Commercial General Liability and Automobile Liability policies and “drop down” for defense and indemnity in the event of exhaustion of the underlying insurance. *(The limits of liability required in this Section 7 may be satisfied with a combination of general liability, umbrella and/or excess policies of insurance where applicable, provided that such policies comply with all of the provisions hereof including, without limitation, with respect to scope of coverage, naming of the Insured Parties as additional insureds and applying as primary and non-contributory to any other insurance available to the additional insureds.)*
- (f) **Professional Liability Insurance.** This insurance shall include annual limits of at least **\$5,000,000** per claim and in the aggregate. This insurance must be maintained for at least

**5 years** following completion of the Work. *This requirement shall apply only if your work under this contract involves any type of design or engineer work.*

- (g) ***Contractor's Pollution Liability Insurance.*** *Any Subcontractor whose work involves removal or treatment of hazardous materials will provide and maintain contractor's pollution liability insurance with annual limits of at least \$10,000,000, and shall continue to maintain such insurance for a period of not less than 5 years following substantial completion of the Project.*

## **7.2 General Insurance Requirements.**

- (a) To the fullest extent permitted by law, Owner, Contractor, and such other parties as Contractor may designate, shall be listed as additional insureds on each Subcontractors' Commercial General Liability, Business Auto Liability and Umbrella/Excess policies. Each policy (including umbrella/excess) shall state that the insurance provided to the additional insureds is primary and non-contributory to any other insurance (including primary, excess, self-insurance, or on any other basis) available to the additional insureds. The policies each Subcontractor provides in compliance with this Exhibit shall not eliminate or restrict coverage for claims or suits between named insureds and additional insureds. To the fullest extent permitted by law, the coverage provided to the additional insureds must be at least as broad as that provided to the Subcontractor who is the first named insured on each policy. In the event that any policy provided in compliance with this Exhibit states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this Agreement is intended to restrict or limit the breadth of such coverage. With respect to the Commercial General Liability policy, additional insured status must be provided using a current I.S.O. endorsement(s) or its equivalent(s). The Commercial General Liability insurance must also include I.S.O. CG 20 01 04 13 or its equivalent.
- (b) The limits of insurance provided by each Subcontractor shall be the greater of the limits maintained in the normal course of each Subcontractor's business or the minimum limits specified in this Exhibit. The limits of insurance stated above for each type of insurance are minimum limits only; in the event any Subcontractor's policy provides greater limits, then the additional insureds shall be entitled to, or to share in, the full limits of such policy, and this Agreement shall be deemed to require such full limits.
- (c) Certificates of Insurance ("COI's), in duplicate, indicating the job site and evidencing all required coverages must be submitted to Contractor prior to the commencement of any Work and prior to any personnel coming onto the Project site. Subcontractor shall collect COIs from each of its Subcontractors for all insurance required by this Exhibit. Subcontractor shall continue to provide to Contractor (and to collect from its Subcontractors and provide to Contractor) COIs annually, and in the event of any change in insurer, limits or coverage, during the entire time period for which such insurance is required under this Exhibit.

A Subcontractor's failure to provide a COI shall not relieve it of its responsibility to carry and maintain the insurance required by this Exhibit. Contractor's failure to demand or inspect a COI and/or Contractor's failure to identify or object to any discrepancy therein is not a waiver of any requirement contained in this Exhibit or elsewhere in this Agreement. At Contractor's request, a Subcontractor shall provide Contractor with a copy of the insurance policies required hereunder, and any and all endorsements or riders thereto, evidencing compliance with all requirements contained in this Agreement, all in form and substance satisfactory to Contractor. With respect to Subcontractor's obligations hereunder, Contractor's failure to inspect such policies and/or endorsements, and/or Contractor's failure to identify or object to any discrepancy therein, is not a waiver of any requirement contained in this Exhibit or elsewhere in this Agreement.

- (d) All policies shall contain a provision that coverages afforded under the policies shall not be canceled, materially changed or not renewed unless at least thirty (30) days prior written notice has been given to Contractor, at the address set out above.
- (e) To the fullest extent permitted by law, all insurance a Subcontractor furnishes in compliance with this Exhibit shall include a waiver of subrogation in favor of Contractor and the other additional insureds, the Indemnified Parties, and any other party requested by Contractor.
- (f) If the insurance provided by a Subcontractor excludes or limits coverage for named insureds because a CCIP has been provided for this Project, such limitation or exclusion may only apply to the extent of valid and collectible insurance available from the CCIP. No such exclusion or limitation may apply to Contractor or any other additional insured.
- (g) The policies a Subcontractor furnish in compliance with this Exhibit shall not be subject to any self-insured retention in excess of \$25,000 unless approved in writing by Contractor. Each Subcontractor shall be responsible for any deductible or self-insured retention due under any insurance it provides. The coverage afforded to the additional insureds shall not be conditioned on the payment of any deductible or retention.
- (h) To the fullest extent permitted by law, if a Subcontractor fails to furnish the required COIs or maintain the coverage required under this Exhibit or if any of the insurance is cancelled or changed such that it is no longer compliant with this Exhibit, Contractor may: (1) immediately terminate this Agreement and such Subcontractor will reimburse Contractor for any and all losses resulting from such Subcontractor's failure, or (2) Contractor may procure substitute insurance and such Subcontractor shall reimburse Contractor for all associated costs including insurance premiums or such costs will be offset against amounts otherwise payable to such Subcontractor under this Agreement. To the fullest extent permitted by law, in the event a Subcontractor's failure to comply with any aspect of this Exhibit results in payment for defense or indemnity by Contractor and/or any Additional Insureds or by Contractor and/or any other additional insured party's insurance, such Subcontractor shall indemnify such party for the full amount paid by Contractor and/or any Additional Insured or by such party's insurance, and such Subcontractor shall not be entitled to an off-set whatsoever, from other insurance. This remedy is without prejudice to or limitation of any other remedy available to Contractor under the terms of this Agreement or Applicable Law.

**8. Limitation.** The CCIP and the insurance requirements described in Exhibit exist for the sole and exclusive benefit and protection of Contractor and the Enrolled Parties. The CCIP and

required insurance described in Exhibit are not intended to benefit any other parties including, without limitation, parties not enrolled in the CCIP, Excluded Parties or claimants (regardless of whether such claimant's claim(s) are covered by the CCIP and regardless of against whom such claimant makes claim(s)). Contractor is not responsible for enforcing any term of this Exhibit for the benefit of any party not enrolled in the CCIP.

**9. Subcontractors' Representations and Warranties to Contractor.** Each Subcontractor represents and warrants to Contractor that:

- (a) All information they submit to Contractor, or to the CCIP Administrator, shall be accurate and complete.
- (b) They have had the opportunity to read and analyze copies of the CCIP insurance policies that are on file in the CCIP Administrator's office, and that they understand the CCIP Coverages. Any reference or summary in this Agreement, this Exhibit, the CCIP Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of CCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Each Subcontractor has not relied upon said reference but solely upon its own independent review and analysis of the CCIP Coverages in formulating any understanding and/or belief as to amount, nature, type or extent of any CCIP Coverages and/or its potential applicability to any potential claim or loss.

**10. Audits.** Each Subcontractor agrees that Contractor, the CCIP Administrator, and/or any CCIP insurer(s) may audit their records, insurance coverages, insurance cost information, or any other information that each Subcontractor provides to Contractor, the CCIP Administrator, or the CCIP insurer(s) to confirm their accuracy and to identify their insurance cost as established previously herein.

**11. Contractor's Election to Modify or Discontinue the CCIP.** Contractor may, for any reason, modify the CCIP Coverages, discontinue the CCIP, or request that a Subcontractor withdraw from the CCIP upon thirty (30) days written notice. Upon such notice a Subcontractor, as specified by Contractor in such notice, shall obtain and thereafter maintain during the performance of the Work, replacement coverage for all of the CCIP Coverages (or a portion thereof as specified by Contractor). Such coverages shall be at Contractor's expense, but only to the extent of such Subcontractor's Cost of CCIP Coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to Contractor's approval.

**12. Waiver of Insurance-Related Claims.** With respect to the CCIP insurance, unless prohibited by law, each Subcontractor hereby waives all rights of recovery because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage against Contractor, the CCIP Administrator, its or their officers, agents, or employees. The waivers provided hereunder shall be effective as to any individual or entity, even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium, directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

PART 2 – COI

		<b>CERTIFICATE OF LIABILITY INSURANCE</b>			DATE (MM/DD/YYYY) 8/2/2016		
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.							
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).							
PRODUCER Insurance Agent's Name and Address				CONTACT NAME:			
				PHONE (A/C, No, Ext):		FAX (A/C, No):	
				E-MAIL ADDRESS:			
				INSURER(S) AFFORDING COVERAGE		NAIC #	
INSURED Contractor or Subcontractor's Name and Address				INSURER A: Insurance Carrier			
				INSURER B:			
				INSURER C:			
				INSURER D:			
COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	X	POLICY NUMBER			Per Claim/Occ \$ 1,000,000 General Agg \$ 2,000,000 Prod & Comp Opp Agg \$ 2,000,000 Personal & Adv. Injury \$ 1,000,000 Fire Damage \$ 100,000 Medical Expense \$ 10,000
	AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/>						
	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS	X	X	POLICY NUMBER			Combined Single Limit \$ 1,000,000
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE	X	X	POLICY NUMBER			Per Claim/Occ \$ 5,000,000 Aggregate \$ 5,000,000
	DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> (Mandatory in NH) IF YES, CHECK THE BOX DESCRIPTION OF OPERATIONS below	N/A	X	POLICY NUMBER			<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER EL Each Accident \$ 1,000,000 EL Disease Policy Limit \$ 1,000,000 EL Disease Each Accident \$ 1,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)							
FLATIRON DRAGADOS LLC CONTRACTOR CONTROLLED INSURANCE PROGRAM – PROJECT NUMBER TBD							
DESIGNATED PROJECT SITE: US181 HARBOR BRIDGE PROJECT							
ALL ENTITIES AS PER SCHEDULE A – ADDITIONAL INSUREDS AS REQUIRED IN THE CONSTRUCTION AGREEMENT ARE NAMED ADDITIONAL INSUREDS UNDER THE GENERAL LIABILITY, AUTOMOBILE LIABILITY, AND EXCESS LIABILITY POLICIES ON A PRIMARY AND NON-CONTRIBUTORY BASIS. A WAIVER OF SUBROGATION EXISTS IN FAVOR OF ALL ENTITIES LISTED ABOVE AND ANY OTHER REQUIRED BY CONTRACT WITH REGARD TO WORKERS COMPENSATION, EMPLOYERS LIABILITY, GENERAL LIABILITY, AUTOMOBILE LIABILITY, AND EXCESS LIABILITY. GENERAL LIABILITY, WORKERS COMPENSATION, EXCESS LIABILITY AND AUTO LIABILITY APPLIES OFF SITE AND ON SITE.							
CERTIFICATE HOLDER				CANCELLATION			
Flatiron Dragados LLC C/O Aon Risk Services, Inc. 4 Overlook Point Lincolnshire, IL 60069				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.			
				AUTHORIZED REPRESENTATIVE Original Signature			

ACORD 25 (2016/03)

1988-2016 ACORD CORPORATION. All rights reserved

The ACORD name and logo are registered marks of ACORD

**EXHIBIT E**

**SUBCONTRACTOR'S DOCUMENTS**

1. **Subcontractor Safety Plan :**

***[Attach Plan to be prepared by Subcontractor]***

2. **Subcontractor Quality Management Plan :**

***[Attach Plan to be prepared by Subcontractor]***

DRAFT

**EXHIBIT F****JOBSITE RULES, SAFETY REQUIREMENTS AND SUBCONTRACTOR SAFETY QUESTIONNAIRE**

Each Subcontractor shall be responsible for fully complying with all applicable laws, statutes, ordinances, rules, regulations and/or orders of any public authority (federal, state, local) as they relate to safety of persons, environment, public, or property. Changes in these standards made during the duration of a contract will be immediately binding and enforced, provided they are more stringent than existing health and safety standards. All current applicable standards (including, but not limited to OSHA, Homeland Security and E-Railroad Security), are incorporated into this program by reference. Each Subcontractor shall maintain a current copy of the applicable OSHA standards on the Project Site.

Throughout the duration of the Project, each Subcontractor shall be responsible for administering their own safety programs which must meet or exceed the safety requirements outlined in the Project Specific Health and Safety Plan. The Project Specific Health and Safety Plan shall serve as a general framework and as such the Subcontractors shall develop a site-specific safety program which identifies potential exposures associated with the Project and the means and methods to be employed to address these exposures. Neither the Project Specific Health and Safety Plan, nor the safety services provided by individuals associated with this Project, is intended to serve as a substitute for the control and responsibility of each Subcontractor to provide a safe work environment for their employees, and to ensure the safety of the public.

**PROJECT SAFETY ORIENTATION**

A formal Project Safety Orientation is required for each Subcontractor's employees including all on-site personnel regularly employed by consultants and vendors prior to working on the Project.

**STOP WORK AUTHORITY** – All personnel working for the Project is **AUTHORIZED TO STOP WORK FOR ANY ACT THAT MAY BE DEEMED UNSAFE WITHOUT FEAR OF RETROBUTION!**

Zero Tolerance Policy – Violation of below requirements may result in permanent removal of an employee or Subcontractor from the Project:

- **General Rules: No Exceptions**
  - No fighting
  - No horseplay
  - No drug, alcohol use, or guns on work site
- **DRA's – Daily Risk Assessment – Conducted Each Day**
  - JHA, DRA, SOP are to be available for review at any time
  - New arrival personnel must be greeted by work crew member before entering the work zone.
  - You must read, understand, and sign the document prior to any work site entry
  - Safety Hazard Assessment Documents – Shall be turned in weekly by **8 am Monday mornings**
  - When conditions or hazards change, a new assessment is required

- **Stretch and Flex**
  - Stretch & Flex exercises will be **led daily** by a crew Supervisor immediately following individual crew JHA/JSA or DRA documented work hazard assessment.
  - Stretch & Flex exercises help to minimize soft tissue injuries such as, muscles & ligaments.
- **Tool Box Talks – Conducted Each Friday morning**
  - Current week activity – turn in document **by 8 am Monday mornings**
- **PPE – Personal Protection Equipment – Worn from Gate to Gate**
  - Hard Hat – A Site Specific Safety Decal is a mandated requirement
  - Safety Vest – Class 3- High Visibility with 4” sleeve
  - Safety Glasses - Z 87 Rated
  - Work Gloves – 100% of time during work schedule
  - Leather Style Work Boots – Ankle, Lace Up, or Pull On Required
    1. Steel Toe Boots with **Puncture Resistant Soles**
  - Face Shield – Required when sparks are created by cutting or grinding
  - Leather Chaps w/ Quickie Saw or Shinn Guards – Task Specific
  - **No tennis shoes, tank tops, sleeveless T-shirts, or shorts**
  - No owner, subcontractor, delivery vendor, developer or other personnel are exempt from wearing PPE..... **NO EXCEPTIONS!**
- **No Walking Under Elevated Loads**
  - Tag lines “SHALL” be utilized for movement and stabilization of materials
- **Fall Protection**
  - 100% at 6ft. and above – **ABSOLUTELY NO EXCEPTIONS!**
  - Inspected before each use – Only Double Pelican Hook Lanyard Permitted
  - Documented Inspection 1st **Work Day of Each Month** – sign off on yellow tag
- **Yellow Tag Items - documented inspection on first work day of every month (Give Illustration here)**
  - Ladders - ALL, including job made
  - Fire extinguishers
  - Fall protection – Lanyards & Harness
- **Extension Ladders**
  - Secured at top and bottom, 3ft minimum at exposed landing
  - Extension ladders shall not be separated at any time during construction
  - Secure all ladders at Top and Bottom and protect from impalement if impalement when applicable
- **Step ladders**
  - No standing/working on top two steps
- **Scaffolds**
  - Fall protection
  - Mud sills
  - Green tag - Yellow tag - Red tag
  - Climbing “X” braces
  - Toe boards
- **Mobile Scaffolds**
  - 6 ft. rule - tie off or guard rail system

- **Ariel Lifts and Scissor Lifts**
  - Fall protection required
  - Proper anchor point
  - Manufacturer Load Limit maintained
  - Training Certs Required
- **Seat Belts**
  - Engineered by Manufacturer – shall be worn at all times
  - Personal or company vehicles shall not exceed engineered occupancy
- **Trailers shall not exceed rated weight capacity**
- **No Riding on Equipment** or in the back of any open bed trucks
- **Material and Equipment**
  - Loads shall be **secured** during transportation
- **Fire protection**
  - Fire extinguishers positioned @ 50ft. Size is task specific
  - Welding, cutting, grinding – fire extinguishers shall be in immediate work area
  - Hot Work Permit (when required) - **Issued by Safety Department**
- **Power Cords - Tool Cords – Equipment Cords**
  - No knots or loops, ground lug missing, insulation/wiring exposed
  - GFCI's shall be utilized in all applications – Internal or External
  - Color Coded - Monthly
- **Trench & Excavation**
  - Must use open excavation warning signage
  - Warning Barriers shall be properly maintained or repaired
  - Atmosphere must be monitored at every 4 ft. prior to entry and at every 4 ft. thereafter
  - Proper trench box safety pins - no nails, screws or bolts, etc.
  - Trench box & certification required at 5ft depth & greater
  - Proper Compliance for Spoil and Benching
  - Competent person on site with proper certification(s)
  - Daily Inspection Document readily available for inspection
  - Ladder Compliance- Positioned at 25 ft. for access/egress for depths of 4 ft. or greater
- **HAZ-COM**
  - All containers must be labeled and readable
  - SDS shall be readily available, or in job site office trailer
  - Over 1 gallon – If seal has been broken on container a retention berm or comparable shall be built for containment and proper storage.
- **Accidents, Incidents & Near Misses**
  - Report incident immediately to
    1. Foreman
    2. Safety Supervisor
    3. Superintendent
    4. Project Manager
  - Documented report by the Supervisor/Foreman shall follow within that immediate 24 hour period
  - Investigation will be documented by the Safety Supervisor

- Superintendent/Foreman -Take multiple pictures for recordkeeping
- Superintendent/Foreman -Document Witness Statements
- Verify JHA/DRA Documents for compliance
- **CPR/First Aid Certified**
  - Superintendent and/or foreman
  - At least 1 certified member per work team
  - At least 1 first aid kit shall be accessible onsite, i.e.: vehicle, job box, job trailer
- **Contaminant Spill or Leaks**
  - Stop equipment immediately, contain and prevent liquid from spreading
  - Report immediately to Safety Manager
  - Shall have at least 1 spill kit on each jobsite
  - Contents shall be disposed legally
- **Housekeeping**
  - Designated area for trash
  - Debris shall be picked up **at end of each shift** prior to site departure
  - All crews are responsible for their own trash and debris
  - All nails shall be removed from boards. No protruding nails may exist for impalement hazards
- **Drinking Water**
  - Bottled water will be required at work site
  - Trash disposal shall be made available
  - In areas when using individual water bottles, do not share and leave manufacturer labeled on bottle.
  - **Use designated Recycle Container for discarded plastic waste**
- **Muster Point** – Flatiron/Dragados, LLC job trailer, lay down yard, or other areas may be “**deemed**” such in emergency situations:
  - Fire
  - Tornado
  - Hurricane
  - Hail storm
  - Lightning
    - 1.50 miles – crew receives verbal warning
    - 2.30 miles – crew vacate work area and into vehicles
    - 3.15 miles – crew meets at muster point and await for further instructions
    - 4. You may return to work once the storm has passed and the last lightning strike was observed 35 minutes prior
- **Crane Activity**
  - Operator and Rigger shall have **dedicated channel** for communication
  - Operator and Rigger shall first discuss lift activity with Flatiron/Dragados, LLC Safety Supervisor **prior to any type lift made**
  - Operator and Rigger shall provide proof of current certification
  - Critical Lifts require a documented and approved pick plan
  - Swing Radius defined, secured, and barricaded
  - Outrigger Pads shall be used for level, safe operation of equipment at all times
- **Speed**

- 10 mph – “Share The Path”
- State, County or Posted speed limits shall be adhered to on all worksite paved or graveled roadways
- **Vehicle Lights** on at all times while in motion or at work place environment
- **Parking – Back In parking only.** In the event we should have to evacuate during an emergency, we would not have to back out to leave. **(30% of all accidents are caused during backing)**
- **Lock Out/Tag Out (LOTO)**
  - Notify all affected employees that a lock-out /tag-out system is going to be utilized and the reason explained
  - Attach a “Danger – Do Not Operate” tag to the equipment operations device. This tag must be dated and have the name of the authorized person applying the lock. Tags are not to be removed unless authorized by the person who installed the LOTO Tag
  - After work is completed and equipment is ready for normal operation, check areas to be certain that no one is exposed and inform affected personnel that the equipment / system will be energized
  - Equipment shall have ”Walk Around” conducted for operation evaluation and regulatory compliance
- **Secured Areas - Port of Corpus Christi**
  - No access will be granted without a TWIC card
  - TWIC Card holder will serve as an ESCORT when required. Stay within “talking” distance of each other when escorted
  - Personnel shall retain a Valid Picture ID on person at all times
  - A **TWIC Card** holder will be designated by a **TWIC** decal on his/her hard hat
- **Working Over or Near Water – Emergency Planning**
  - Shall have Rescue Team with Boat in place prior to work beginning
  - Warning barrier shall be in place
  - Do not cross beyond 30 ft. barrier
  - Shall wear compliance Life Preserver Vest or have Life Preserver Ring/Rope readily accessible. Vest shall be zipped and clipped
- **Drilling Operations**
  - Fall Protection -Drill Shaft Barrier shall be installed/utilized when drilling
  - Lanyard, Harness, and proper Anchor Point shall be utilized when deemed necessary
  - Drill Shaft Hole – Shall be covered, **secured**, and painted with wording “hole” until hole is completely backfilled
  - Outrigger Pads with Proper Cribbing shall be placed under all outrigger foot pads for level and safe operation of equipment
  - Overhead Power Signs shall be placed in immediate area when imminent danger exists within 20 ft. of an overhead power line
- **Railroad**
  - Stay clear of Railroad Tracks when working. Do not stray onto RR Tracks
  - Stay 50 ft. from center line of tracks at all times
  - Railroad Flagman shall be required when working within 25 ft. of track
- **Fuel Containers**

- No plastic containers. Plastic fuel containers create static electricity & shall be removed from the Harbor Bridge Project work site immediately
- Fuel containers shall be of approved metal type. Containment may be kept in a fixed berm type area or of double walled protection
- Proper labeling and readable for HAZ COM compliance
- **Training Documents**
  - Training Documents may be requested by Safety Personnel on specific equipment as proof of training and that operator status is current for Regulatory Compliance
- **Media Relations and Communications Official**
  - News Reporter
  - Radio
  - Television
  - General Public
  - **No person shall discuss any Harbor Bridge Project activity or information with any entity described above. All Harbor Bridge Project Information and Communication shall be directed to Public Information Coordinator**
- **Talking or Texting**
  - Talking or Texting while driving is strictly prohibited at all times
  - Hands Free is the only means excepted
  - Texting citations are double in costs vs Talking citations
  - Corpus Christi has a Texas a law that prohibits such;  
Talking - \$500.00 Fine  
Texting - \$1000.00 Fine
- **Language**
  - English is the primary Language spoken on the Harbor Bridge Project
  - Translators are designated by a hard hat decal “Translator”
- **OSHA Compliance Safety and Health Official Visit - (CSHO)**
  - OSHA Official – Federal Badge & Photo Identification Presented
  - Supervisor Contact Safety Department Manager, Marvin Wittman Immediately
  - OSHA Official and Safety Manager Proceed with Project Observation
  - Photos – OSHA Official and Safety Department Manager
  - OSHA Official - Official Closing Remarks and Conference
    - Safety Department Manager
    - Project Manager
    - Superintendent and/or Foreman

**SUBCONTRACTOR SAFETY QUESTIONNAIRE FORM**

Flatiron/Dragados, LLC - US 181 Harbor Bridge				
Subcontractor Pre-Qualification Safety Questionnaire Form				
To Be Completed By The Sub-Contractor				
<b>Company Name / Address / Phone &amp; Fax:</b>		<b>Project:</b>	US 181 Harbor Bridge	
		<b>Scope of Work:</b>		
		Yes	No	Remarks
1	<b>Health and Safety Policy</b>			
a.	Does your organization have a current IIPP/Safety Manual?			Submitted copy must be approved by the Flatiron/Dragados, LLC Safety Manager
b.	Is the IIPP/Safety Manual appropriate for scope of work?			
c.	Who within the organization has responsibility at senior management level for Safety? Name: _____ Ph: _____			If No, Explain Why?
d.	Average number of workers anticipated to be onsite?			
e.	Does your organization have a substance abuse policy?			
2	<b>Health and Safety Organization</b>			
a.	Name and qualifications of the designated Safety Person(s) or Competent Person(s) on site? Name: _____ Qualifications: _____			Details Must Be Submitted
b.	Have all employees received adequate training in health and safety? <b>Please provide details of training in relation to the work to be done</b>			Training Records Must Be Available
c.	Does the organization intend to carry out on-site training? (i.e. toolbox talks)			Submit Examples
d.	Does the subcontractor utilize risk assessments/JHA? <b>Please attach recent examples.</b> Note a specific risk assessment/JHA must be submitted to site for approval at least seven days before commencing work			Recent Sample Must Be Submitted
e.	Lost time incident rates for last 3 years _____			Flatiron/Dragados, LLC will Decide If Submitted Rates Are Acceptable
f.	Recordable incident rates for last 3 years _____			
g.	EMR for the last 3 years: _____			
h.	Any OSHA citations in the last 3 years?			Please Include Explanations explanations.
<b>Flatiron/Dragados, LLC - Internal Use Only</b>		Date Approved / Denied: _____		
Sub-Contractor meets expectations? ___ Yes ___ No				
Reviewed & Approved By: _____		Title: _____		
Signature of Approver: _____				
Reason(s) For Denial: _____				
Flatiron/Dragados, LLC - US 181 Harbor Bridge				
Subcontractor Questionnaire Preparation Form				
This Form Is Designed To Assist Your Organization In Getting Together All Of The Required Information For The Pre-Qualification Form				

<b>Company Name / Address / Phone &amp; Fax:</b>		<b>Project:</b> US 181 Harbor Bridge	
		<b>Scope of Work:</b>	
		<b>Yes</b>	<b>No</b>
<b>Health and Safety</b>			
a.	Does your firm have a current IIPP/Safety Manual?		
b.	Will your firm have employees working at heights greater than 6'?		
c.	Will your firm be performing any hoisting activities on site?		
d.	Will your firm have employees utilizing respirators?		
e.	Will your firm be operating or using heavy equipment?		
f.	Will your firm be using power tools?		
g.	Is there any anticipated hot work activities?		
h.	Will your firm be performing any flagging or traffic control operations?		
i.	Will your firm have any excavation activities?		
j.	Is there any anticipated confined space activities?		
k.	Does your firm have a written Heat Illness policy?		
l.	Does your firm intend on using ladders?		
m.	Any Demolition work being performed by your firm?		
n.	Will your firm perform any mining and tunneling work?		
o.	Will your firm use or erect a scaffold system?		
p.	Average number of workers onsite?		
q.	Are there hazards from your work that may affect other near-by employees?		
r.	Will your firm have an appointed safety representative?		
s.	Will your firm provide required training for your employees?		
t.	Does your firm utilize risk assessments/JHA?		
u.	Lost time incident rates for last 3 years		
v.	Recordable incident rates for last 3 years		

**EXHIBIT G**

**SCHEDULE OF VALUES**

Attached

DRAFT

**EXHIBIT H****PAYMENT AND PERFORMANCE BONDS**

Subcontractor shall provide payment and performance bonds to Contractor securing Subcontractor's obligations hereunder, and shall maintain such bonds in full force and effect as described below.

**1. Payment Bond**

On or before the date that is ten days after the Effective Date, Subcontractor shall deliver to Contractor a payment bond in the amount of \$[ ] *[Insert amount that is 100% of the NTE Value]* (the "Payment Bond"). Contractor will release the Payment Bond upon:

- a) Receipt of: (i) evidence satisfactory to Contractor that all persons eligible to file a claim against the Payment Bond have been fully paid and, (ii) unconditional releases of Liens and stop notices from all sub-Subcontractor who filled preliminary notice of a claim against the Payment Bond (or evidence satisfactory to Contractor that any such Liens and stop notices have been separately bonded around), or
- b) Expiration of the statutory period for sub-Subcontractors to file a claim against the Payment Bond if no claims have been filed.

**2. Performance Bond**

On or before the date that is ten days after the Effective Date, Subcontractor shall deliver to Contractor a performance bond in the amount of \$[ ] *[Insert amount that is 100% of the NTE Value]* (the "Performance Bond"). On the date that is one year after the Project Final Acceptance as defined in the Contract, Contractor will provide a release of the Performance Bond provided that (and upon such date thereafter that) all of the following have occurred:

- a) Subcontractor is not in default under this Agreement; and
- b) no event has occurred that with the giving of notice or passage of time would constitute a default by Subcontractor hereunder or under the Subcontract Documents.

Subcontractor shall not commence or are allow to commencement of any construction Work until Subcontractor obtains from its Sureties and provides to Contractor confirmation that the Performance Bond and Payment Bond amounts have been delivered in accordance with this Exhibit.

Each bond required hereunder shall be issued by a Surety authorized to do business in the State with a rating of at least A minus (A-) or better and Class VIII or better by A.M. Best Company or rated in the top two categories by two nationally recognized rating agencies, or as otherwise approved by Contractor in its discretion. If any bond previously provided becomes ineffective, or if the Surety that provided the bond no longer meets the requirements hereof, Subcontractor shall provide a replacement bond in the same form issued by a surety meeting the foregoing requirements, or other assurance satisfactory to Contractor in its discretion. If the Price is increased in connection with a Change Order, Contractor may, in its discretion, require a corresponding proportionate increase in the amount of each bond or alternative security.

**PAYMENT BOND FORM**

**FORM OF PAYMENT BOND**

*[To be replaced with actual Performance Bond.]*

**US 181 HARBOR BRIDGE PROJECT**

Bond No. \_\_\_\_\_

WHEREAS, the Flatiron/Dragados, LLC (“Obligee”), has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Construction Subcontract Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of \_\_\_\_\_, 20\_\_ (the “Subcontract”), on the terms and conditions set forth therein; and WHEREAS, upon award of the Subcontract, Principal is required to furnish a bond (this “Bond”) guaranteeing the faithful performance of its obligations related to the D&C Work under the Subcontract Documents.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[\_\_\_\_\_] *[Insert amount that is 100% of the Subcontract Price]*. (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Subcontract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

The following terms and conditions shall apply with respect to this Bond:

1. The Subcontract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Subcontract.
2. No alteration, modification or supplement to the Subcontract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of Changes without the Surety’s prior written consent thereto having been obtained, does not increase the Price by more than \$[\_\_\_\_\_] *[Insert amount that is 100% of the Subcontract Price]*. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for Changes in excess of such amount.
3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 4. This Bond shall inure to the benefit of Sub-Subcontractors and Suppliers with respect to the Subcontract Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 20\_\_.

Principal: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 (Seal)

Surety: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 (Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

\_\_\_\_\_  
or secretary attest

**SURETY**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_

**PERFORMANCE BOND FORM**

**FORM OF PERFORMANCE BOND**

*[To be replaced with actual Performance Bond.]*

**US 181 HARBOR BRIDGE PROJECT**

Bond No. \_\_\_\_\_

WHEREAS, the Flatiron/Dragados, LLC (“Obligee”), has awarded to \_\_\_\_\_, a \_\_\_\_\_ (“Principal”), a Construction Subcontract Agreement for the US 181 Harbor Bridge Project, duly executed and delivered as of \_\_\_\_\_, 20\_\_ (the “Subcontract”), on the terms and conditions set forth therein; and WHEREAS, upon award of the Subcontract, Principal is required to furnish a bond (this “Bond”) guaranteeing the faithful performance of its obligations related to the D&C Work under the Subcontract Documents.

NOW, THEREFORE, Principal and \_\_\_\_\_, a \_\_\_\_\_ (“Surety”), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of \$[\_\_\_\_\_] *[Insert amount that is 100% of the Subcontract Price]*. (the “Bonded Sum”), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Subcontract Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect.

Obligee shall release this Bond on the date that is one year after Final Acceptance, upon the occurrence of all these conditions:

- a) Subcontractor is not in default under this Subcontract, and
- b) no event has occurred that with the giving of notice or passage of time would constitute a default by Subcontractor hereunder or under the Subcontract Documents.

The following terms and conditions shall apply with respect to this Bond:

1. The Subcontract Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the Subcontract.
2. This Bond specifically guarantees the performance of each and every obligation of Principal related to the Subcontract Work under the Subcontract Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages, Noncompliance Charges and Lane Rental Charges as specified in the Contract Documents, but not to exceed the Bonded Sum.
3. The guarantees contained herein shall survive Final Acceptance of the Subcontract Work called for in the Subcontract Documents with respect to those obligations of Principal which survive such Final Acceptance.
4. Whenever Principal shall be, and is declared by Obligee to be, in default under the Subcontract Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

- a. arrange for the Principal to perform and complete the Subcontract; or
  - b. complete the Project in accordance with the terms and conditions of the Subcontract Documents then in effect, through its agents or through independent contractors; or
  - c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligees for a contract for performance and completion of the Subcontract Work, through a procurement process approved by the Obligees, arrange for a contract to be prepared for execution by the Obligees and the contractor selected with the Obligees' concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Subcontract, and pay to the Obligees the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Subcontract Price incurred by the Obligees resulting from the Principal's default; or
  - d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligees and, as soon as practicable after the amount is determined, tender payment therefore to the Obligees, or (ii) deny liability in whole or in part and notify the Obligees citing reasons therefore.
5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligees to Surety demanding that Surety perform its obligations under this Bond, and the Obligees shall be entitled to enforce any remedy available to the Obligees. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligees refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligees shall be entitled to enforce any remedy available to the Obligees.
6. After the Obligees has terminated the Principal's right to complete the Subcontract, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligees shall not be greater than those of the Principal under the Subcontract, and the responsibilities of the Obligees to Surety shall not be greater than those of the Obligees under the Subcontract. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Subcontract Price to mitigation costs and damages on the Subcontract, Surety is obligated without duplication for:
- a. the responsibilities of the Principal for correction of defective work and completion of the Subcontract Work;
  - b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and c. Liquidated Damages, Noncompliance Charges and Lane Rental Charges under the Contract.
7. No alteration, modification or supplement to the Subcontract Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided that the aggregate dollar amount of Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than \$                      ***[Insert amount that is 10% of the Subcontract Price]***. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for Changes in excess of such amount.

- 8. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- 9. No right of action shall accrue on this Bond to or for the use of any entity other than Obligee or its successors and assigns.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of \_\_\_\_\_, 20\_\_.

Principal: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 (Seal)

Surety: \_\_\_\_\_  
 By: \_\_\_\_\_  
 Its: \_\_\_\_\_  
 (Seal)

**[ADD APPROPRIATE SURETY ACKNOWLEDGMENTS]**

\_\_\_\_\_  
 or secretary attest

**SURETY**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Address: \_\_\_\_\_

**EXHIBIT I**

**DRUG FREE WORKPLACE POLICY**

Is Contractor's policy that all employees must be drug tested prior completing the employment process.

All Subcontractors must participate in the drug and alcohol testing program as a requirement in order to perform work on the Project. All post-accident (non-emergency situation), and reasonable suspicion drug and/or alcohol testing for the Project, will be performed at a facility designated by Contractor.

In addition, if requested by Contractor, each Subcontractor must provide proof that each employee has had a negative screening within the last 6 months prior to entrance into the Project's sites. Contractor may require random screening at every 6 month intervals throughout the duration of the Project.

DRAFT

**EXHIBIT J****FEDERAL REQUIREMENTS****FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

**GENERAL** - The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included as part of the Subcontract Documents. Whenever in said required contract provisions references are made to:

- a) "contracting officer" or "authorized representative", such references shall be construed to mean Owner or its Authorized Representative;
- b) "contractor", "prime contractor", "bidder" "Federal-aid construction contractor", "prospective first tier participant" or First Tier Participant such references shall be construed to mean Contractor or its authorized representative;
- c) "contract", "prime contract", Federal-aid construction contract" or "design-build contract" such references shall be construed to mean the Comprehensive Development Agreement between Contractor and Owner for the Project;
- d) "subcontractor", "supplier", "vendor", "prospective lower tier participant" "lower tier prospective participant", Lower Tier participant" or "lower tier subcontractor", such references shall be construed to mean any Subcontractor or Supplier; and
- e) "department", "agency", "department or agency with which this transaction originated" or "contracting agency" such references shall be construed to mean Owner, except where a different department or agency or officer is specified.

**PERFORMANCE OF PREVIOUS CONTRACT** - In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Contractor shall comply with the following:

The bidder shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

**NON-COLLUSION PROVISION** - The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding

in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

**PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN SUBCONTRACTING** - Part 26, Title 49, Code of Federal Regulations applies to the Project. Pertinent sections of said Code are incorporated within other sections of the Agreement and the Owner Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

**CONVICT PRODUCED MATERIALS**

- a) FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.
- b) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal aid highway construction project if such materials have been: (i) produced by convicts who are on parole, supervised release, or probation from a prison, or (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in Federal aid highway construction projects, and the cumulative annual production amount of such materials for use in Federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

**ACCESS TO RECORDS**

- c) As required by 49 CFR 18.36 (i) (10), Contractor and its Subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Contractor and Subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36 (i) (11), Contractor and its Subcontractors shall retain all such books, documents, papers, and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.
- d) Contractor and Subcontractor agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

**FHWA FORM 1273****General**

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

- 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:
  - i. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
  - ii. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
  - iii. 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 journeyman 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 contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

## **VI. SUBLETTING OR ASSIGNING THE CONTRACT**

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

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).
  - a) The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:
    - i. the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
    - ii. the prime contractor remains responsible for the quality of the work of the leased employees;
    - iii. the prime contractor retains all power to accept or exclude individual employees from work on the project; and
    - iv. 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.

DRAFT

**FEDERAL PREVAILING WAGE RATE**

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. To determine the applicable wage rate zone, a list entitled "TEXAS COUNTIES IDENTIFIED BY WAGE RATE ZONES" is provided in the contract. Any wage rate that is not listed must be submitted to the Contractor Representative for approval. **IMPORTANT NOTICE FOR STATE PROJECTS;** only the controlling wage rate zone applies to the contract. Effective 1-2-2015

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/2/15	ZONE TX08 1/2/15	ZONE TX11 1/2/15	ZONE TX12 1/2/15	ZONE TX14 1/2/15	ZONE TX16 1/2/15	ZONE TX18 1/2/15	ZONE TX34 1/2/15	ZONE TX35 1/2/15	ZONE TX37 1/2/15	ZONE TX38 1/2/15	ZONE TX40 1/2/15	ZONE TX41 1/2/15	ZONE TX54 1/2/15	ZONE TX56 1/2/15	ZONE TX63 1/2/15
1428	Agricultural Tractor Operator						\$12.69					\$12.35			\$11.75		
1300	Asphalt Distributor Operator	\$14.87	\$13.48	\$13.88			\$15.55	\$15.72	\$13.28	\$15.32	\$15.62	\$14.36	\$14.25	\$14.03	\$13.75	\$14.06	\$14.40
1303	Asphalt Paving Machine Operator	\$13.40	\$12.25	\$12.35	\$13.87		\$14.36	\$14.20	\$13.26	\$13.99	\$14.68	\$12.92	\$13.44	\$12.53	\$14.00	\$14.32	\$12.99
1106	Asphalt Raker	\$12.28	\$10.61	\$12.02	\$14.21		\$12.12	\$11.64	\$11.44	\$12.69	\$12.05	\$11.34	\$11.67	\$11.40	\$12.59	\$12.36	
1112	Batching Plant Operator, Asphalt																
1115	Batching Plant Operator, Concrete																
1214	Blaster																
1615	Boom Truck Operator						\$18.36										
1444	Boring Machine Operator																
1305	Broom or Sweeper Operator	\$11.21	\$10.33	\$10.10			\$11.04	\$11.62		\$11.74	\$11.41	\$10.30		\$10.23	\$10.60	\$12.68	\$11.05
1144	Communications Cable Installer																
1124	Concrete Finisher, Paving and Structures	\$13.55	\$12.46	\$13.16	\$12.85		\$12.56	\$12.77	\$12.44	\$14.12	\$13.04	\$13.38		\$12.80	\$12.79	\$12.98	\$13.32
1318	Concrete Pavement Finishing Machine Operator						\$15.48			\$16.05		\$19.31				\$13.07	
1315	Concrete Paving, Curing, Float, Texturing Machine Operator											\$16.34				\$11.71	
1333	Concrete Saw Operator									\$14.48	\$17.33					\$13.99	
1399	Concrete/Gunite Pump Operator																
1344	Crane Operator, Hydraulic 80 tons or less						\$18.36			\$18.12	\$18.04	\$20.21			\$18.63	\$13.86	
1345	Crane Operator, Hydraulic Over 80 Tons																
1342	Crane Operator, Lattice Boom 80 Tons or Less	\$16.82	\$14.39	\$13.85			\$15.87			\$17.27		\$14.67			\$16.42	\$14.97	
1343	Crane Operator, Lattice Boom Over 80 Tons						\$19.38			\$20.52		\$17.49			\$25.13	\$15.80	
1306	Crawler Tractor Operator	\$13.96	\$16.63	\$13.62			\$15.67			\$14.07	\$13.15	\$13.38			\$14.60	\$13.68	\$13.50
1351	Crusher or Screen Plant Operator																
1446	Directional Drilling Locator						\$11.67										
1445	Directional Drilling Operator						\$17.24										
1139	Electrician	\$20.96		\$19.87			\$26.35		\$20.27	\$19.80		\$20.92				\$27.11	
1347	Excavator Operator, 50,000 pounds or less	\$13.46	\$12.56	\$13.67			\$12.88	\$14.38	\$13.49	\$17.19		\$13.88			\$14.09	\$12.71	\$14.42
1348	Excavator Operator, Over 50,000 pounds		\$15.23	\$13.52			\$17.71			\$16.99	\$18.80	\$16.22				\$14.53	
1150	Flagger	\$10.10	\$10.10	\$10.10		\$10.10	\$10.10	\$10.10		\$10.10	\$10.10	\$10.10		\$10.10	\$10.10	\$10.33	\$10.10
1151	Form Builder/Setter, Structures	\$13.52	\$12.30	\$13.38	\$12.91	\$12.71	\$12.87	\$12.38	\$12.26	\$13.84	\$12.98	\$13.07	\$13.61	\$12.82	\$14.73	\$12.23	\$12.25
1160	Form Setter, Paving & Curb	\$12.36	\$12.16	\$13.93	\$11.83	\$10.71	\$12.94			\$13.16	\$12.54	\$11.33	\$10.69		\$13.33	\$12.34	
1360	Foundation Drill Operator, Crawler Mounted									\$17.99						\$17.43	
1363	Foundation Drill Operator, Truck Mounted		\$16.86	\$22.05			\$16.93			\$21.07	\$20.20	\$20.76		\$17.54	\$21.39	\$15.89	

1369	Front End Loader Operator, 3 CY or Less	\$12.28	\$13.49	\$13.40			\$13.04	\$13.15	\$13.29	\$13.69	\$12.64	\$12.89			\$13.51	\$13.32	\$12.17
1372	Front End Loader Operator, Over 3 CY	\$12.77	\$13.69	\$12.33			\$13.21	\$12.86	\$13.57	\$14.72	\$13.75	\$12.32			\$13.19	\$13.17	
1329	Joint Sealer																
1172	Laborer, Common	\$10.30	\$10.10	\$10.10	\$10.51	\$10.71	\$10.50	\$10.24	\$10.58	\$10.72	\$10.45	\$10.30	\$10.25	\$10.10	\$10.54	\$11.02	\$10.15
1175	Laborer, Utility	\$11.80	\$11.53	\$12.70	\$12.17	\$11.81	\$12.27	\$12.11	\$11.33	\$12.32	\$11.80	\$11.53	\$11.23	\$11.50	\$11.95	\$11.73	\$12.37
1346	Loader/Backhoe Operator	\$14.18	\$12.77	\$12.97	\$15.68		\$14.12			\$15.18	\$13.58	\$12.87		\$13.21	\$14.13	\$14.29	

CLASS. #	CLASSIFICATION DESCRIPTION	ZONE TX07 1/2/15	ZONE TX08 1/2/15	ZONE TX11 1/2/15	ZONE TX12 1/2/15	ZONE TX14 1/2/15	ZONE TX16 1/2/15	ZONE TX18 1/2/15	ZONE TX34 1/2/15	ZONE TX35 1/2/15	ZONE TX37 1/2/15	ZONE TX38 1/2/15	ZONE TX40 1/2/15	ZONE TX41 1/2/15	ZONE TX54 1/2/15	ZONE TX56 1/2/15	ZONE TX63 1/2/15
1187	Mechanic	\$20.14	\$15.47	\$17.47			\$17.10			\$17.68	\$18.94	\$18.58		\$16.61	\$18.46	\$18.96	
1380	Milling Machine Operator	\$15.54	\$14.64	\$12.22			\$14.18			\$14.32	\$14.35	\$12.86			\$14.75	\$13.53	
1390	Motor Grader Operator, Fine Grade	\$17.49	\$16.52	\$16.88			\$18.51	\$16.69	\$16.13	\$17.19	\$18.35	\$17.07	\$17.74	\$17.47	\$17.08	\$15.69	\$20.01
1393	Motor Grader Operator, Rough	\$16.15	\$14.62	\$15.83		\$17.07	\$14.63	\$18.50		\$16.02	\$16.44	\$15.12		\$14.47	\$17.39	\$14.23	\$15.53
1413	Off Road Hauler			\$10.10			\$11.88			\$12.25		\$12.23			\$13.00	\$14.60	
1196	Painter, Structures						\$18.34						\$21.29			\$18.62	
1396	Pavement Marking Machine Operator	\$16.42		\$13.10			\$19.17	\$12.01		\$13.63	\$14.60	\$13.17		\$16.65	\$10.54	\$11.18	
1443	Percussion or Rotary Drill Operator																
1202	Piledriver															\$14.95	
1205	Pipelayer		\$11.87	\$14.64			\$12.79		\$11.37	\$13.24	\$12.66	\$13.24	\$11.17	\$11.67		\$12.12	
1384	Reclaimer/Pulverizer Operator	\$12.85					\$12.88			\$11.01		\$10.46					
1500	Reinforcing Steel Worker	\$13.50	\$14.07	\$17.53			\$14.00			\$16.18	\$12.74	\$15.83		\$17.10		\$15.15	
1402	Roller Operator, Asphalt	\$10.95		\$11.96			\$12.78	\$11.61		\$13.08	\$12.36	\$11.68			\$11.71	\$11.95	\$11.50
1405	Roller Operator, Other	\$10.36		\$10.44			\$10.50	\$11.64		\$11.51	\$10.59	\$10.30		\$12.04	\$12.85	\$11.57	
1411	Scraper Operator	\$10.61	\$11.07	\$10.85			\$12.27		\$11.12	\$12.96	\$11.88	\$12.43		\$11.22	\$13.95	\$13.47	
1417	Self-Propelled Hammer Operator																
1194	Servicer	\$13.98	\$12.34	\$14.11			\$14.51	\$15.56	\$13.44	\$14.58	\$14.31	\$13.83		\$12.43	\$13.72	\$13.97	
1513	Sign Erector																
1708	Slurry Seal or Micro-Surfacing Machine Operator																
1341	Small Slipform Machine Operator									\$15.96							
1515	Spreader Box Operator	\$12.60		\$13.12			\$14.04			\$14.73	\$13.84	\$13.68		\$13.45	\$11.83	\$13.58	
1705	Structural Steel Welder															\$12.85	
1509	Structural Steel Worker						\$19.29									\$14.39	
1339	Subgrade Trimmer																
1143	Telecommunication Technician																
1145	Traffic Signal/Light Pole Worker						\$16.00										
1440	Trenching Machine Operator, Heavy						\$18.48										
1437	Trenching Machine Operator, Light																
1609	Truck Driver Lowboy-Float	\$14.46	\$13.63	\$13.41	\$15.00	\$15.93	\$15.66			\$16.24	\$16.39	\$14.30	\$16.62	\$15.63	\$14.28	\$16.03	
1612	Truck Driver Transit-Mix									\$14.14							
1600	Truck Driver, Single Axle	\$12.74	\$10.82	\$10.75			\$11.79	\$13.53	\$13.16	\$12.31	\$13.40	\$10.30	\$11.61		\$11.97	\$11.46	
1606	Truck Driver, Single or Tandem Axle Dump Truck	\$11.33	\$14.53	\$11.95			\$11.68		\$14.06	\$12.62	\$11.45	\$12.28		\$13.08	\$11.68	\$11.48	\$11.10

1607	Truck Driver, Tandem Axle Tractor with Semi Trailer	\$12.49	\$12.12	\$12.50			\$12.81	\$13.16		\$12.86	\$16.22	\$12.50			\$13.80	\$12.27
1441	Tunneling Machine Operator, Heavy															
1442	Tunneling Machine Operator, Light															
1706	Welder		\$14.02				\$15.97		\$13.74	\$14.84					\$13.78	
1520	Work Zone Barricade Servicer	\$10.30	\$12.88	\$11.46	\$11.70		\$11.85	\$10.77		\$11.68	\$12.20	\$11.22	\$11.51	\$12.96	\$10.54	\$11.67

DRAFT

Notes:

Any worker employed on this project shall be paid at the rate of one and one half (1-1/2) times the regular rate for every hour worked in excess of forty (40) hours per week.

The titles and descriptions for the classifications listed here are further detailed in the AGC of Texas' *Standard Job Classifications and Descriptions for Highway, Heavy, Utilities, and Industrial Construction in Texas*. AGC will make it available on its Web site for any contractor.

DRAFT

**TEXAS COUNTIES IDENTIFIED BY  
WAGE RATE ZONES: 7,8,11,12,14,16,18,34,35,37,38,40,41,54,56,63**

County Name	Zone	County Name	Zone	County Name	Zone	County Name	Zone
Anderson	38	Donley	54	Karnes	37	Reagan	54
Andrews	54	Duval	41	Kaufman	35	Real	54
Angelina	38	Eastland	54	Kendall	16	Red River	38
Aransas	40	Ector	7	Kenedy	41	Reeves	18
Archer	35	Edwards	18	Kent	54	Refugio	37
Armstrong	7	El Paso	34	Kerr	37	Roberts	54
Atascosa	16	Ellis	35	Kimble	54	Robertson	16
Austin	56	Erath	38	King	54	Rockwall	35
Bailey	54	Falls	38	Kinney	18	Runnels	54
Bandera	16	Fannin	38	Kleberg	37	Rusk	11
Bastrop	16	Fayette	37	Knox	54	Sabine	38
Baylor	54	Fisher	54	Lamar	38	San Augustine	38
Bee	37	Floyd	54	Lamb	54	San Jacinto	56
Bell	16	Foard	54	Lampasas	16	San Patricio	40
Bexar	16	Fort Bend	56	LaSalle	41	San Saba	54
Blanco	37	Franklin	38	Lavaca	37	Schleicher	54
Borden	54	Freestone	38	Lee	37	Scurry	54
Bosque	38	Frio	37	Leon	38	Shackelford	54
Bowie	11	Gaines	54	Liberty	56	Shelby	38
Brazoria	56	Galveston	56	Limestone	38	Sherman	54
Brazos	16	Garza	54	Lipscomb	54	Smith	11
Brewster	18	Gillespie	37	Live Oak	37	Somervell	38
Briscoe	54	Glasscock	54	Llano	37	Starr	41
Brooks	41	Goliad	40	Loving	54	Stephens	54
Brown	54	Gonzales	37	Lubbock	7	Sterling	54
Burleson	16	Gray	54	Lynn	54	Stonewall	54
Burnet	37	Grayson	35	Madison	38	Sutton	18
Caldwell	16	Gregg	11	Marion	38	Swisher	54
Calhoun	40	Grimes	38	Martin	54	Tarrant	35
Callahan	35	Guadalupe	16	Mason	37	Taylor	7
Cameron	8	Hale	54	Matagorda	37	Terrell	18
Camp	38	Hall	54	Maverick	41	Terry	54
Carson	7	Hamilton	38	McCulloch	54	Throckmorton	54
Cass	38	Hansford	54	McLennan	16	Titus	38
Castro	54	Hardeman	54	McMullen	41	Tom Green	7
Chambers	56	Hardin	56	Medina	16	Travis	16
Cherokee	38	Harris	56	Menard	54	Trinity	38
Childress	54	Harrison	63	Midland	7	Tyler	38
Clay	35	Hartley	54	Milam	38	Upshur	11
Cochran	54	Haskell	54	Mills	54	Upton	54
Coke	54	Hays	16	Mitchell	54	Uvalde	41
Coleman	54	Hemphill	54	Montague	54	Val Verde	18
Collin	35	Henderson	38	Montgomery	56	Van Zandt	38
Collingsworth	54	Hidalgo	8	Moore	54	Victoria	14
Colorado	37	Hill	38	Morris	38	Walker	38
Comal	16	Hockley	54	Motley	54	Waller	56
Comanche	54	Hood	38	Nacogdoches	38	Ward	54
Concho	54	Hopkins	38	Navarro	38	Washington	38
Cooke	54	Houston	38	Newton	38	Webb	8
Coryell	16	Howard	54	Nolan	54	Wharton	37
Cottle	54	Hudspeth	18	Nueces	40	Wheeler	54
Crane	54	Hunt	35	Ochiltree	54	Wichita	12
Crockett	18	Hutchinson	54	Oldham	54	Wilbarger	54
Crosby	7	Irion	7	Orange	56	Willacy	41
Culberson	18	Jack	38	Palo Pinto	38	Williamson	16
Dallam	54	Jackson	37	Panola	38	Wilson	16
Dallas	35	Jasper	38	Parker	35	Winkler	54
Dawson	54	Jeff Davis	18	Parmer	54	Wise	35

Deaf Smith	54	Jefferson	56	Pecos	18	Wood	38
Delta	35	Jim Hogg	41	Polk	38	Yoakum	54
Denton	35	Jim Wells	37	Potter	7	Young	54
DeWitt	37	Johnson	35	Presidio	18	Zapata	41
Dickens	54	Jones	35	Rains	38	Zavala	41
Dimmit	41			Randall	7		

DRAFT

**STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION  
CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As used in these specifications:
  - a) “Covered area” means the geographical area described in the solicitation from which this contract resulted;
  - b) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c) “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d) “Minority” includes:
    - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor’s or Subcontractor’s failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any

Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
  - d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.
  - e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

- f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade,

union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

DRAFT

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

1. **General.** In addition to the affirmative action requirements of the Special Provision titled “Standard Federal Equal Employment Opportunity Construction Contract Specifications” as set forth elsewhere in this proposal, the Bidder’s attention is directed to the specific requirements for utilization of minorities and females as set forth below.
  
2. **Goals.**
  - a) Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.
  - b) The goals for minority and female participation expressed in percentage terms for the Contractor’s aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade (per-cent)	Goals for female participation in each trade (per-cent)
See Table 1	6.9

- c) These goals are applicable to all the Contractor’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction. The Contractor’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
    - d) A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor’s or subcontractor’s failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors

participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

3. **Subcontracting.** The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
4. **Covered Area.** As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.
5. **Reports.** The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

**TABLE 1**

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

<b>County</b>	<b>Goals for Minority Participation</b>	<b>County</b>	<b>Goals for Minority Participation</b>
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

**CERTIFICATION OF NONDISCRIMINATION IN EMPLOYMENT**

By signing this agreement, the Subcontractor certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

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

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

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

**ON-THE-JOB TRAINING PROGRAM FOR DESIGN-BUILD AND COMPREHENSIVE DEVELOPMENT AGREEMENT PROJECTS**

This training special provision is the Department’s implementation of 23 U.S.C. 140 (a). The primary objective of this provision is to train and upgrade minorities and women toward journey worker status. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

As part of Contractor’s equal employment opportunity affirmative action program, training shall be provided as follows:

1. The Contractor shall ensure that on-the-job training (OJT) aimed at developing full journey worker status in the type of trade or job classification involved is provided.
2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R.§230.111:
  - 1) Dollar value of the construction services contract;
  - 2) Duration of the construction work activity;
  - 3) Geographic location;
  - 4) Availability of minorities, women, and disadvantaged for training;
  - 5) The potential for effective training;
  - 6) Type of work;
  - 7) Total normal work force that the average proposer could be expected to use;
  - 8) The need for additional journeymen in the area;
  - 9) Recognition of the suggested minimum goal for the State; and
  - 10) A satisfactory ratio of trainees to journeymen expected to be on Developer's work force during normal operations.

<b>Construction Cost Estimate</b>		
<b>From</b>	<b>To</b>	<b>Trainees</b>
\$0	\$9,999,999.99	0
\$10,000,000	\$19,999,999.99	1
\$20,000,000	\$39,999,999.99	2
\$40,000,000	\$59,999,999.99	3
\$60,000,000	\$79,999,999.99	4
\$80,000,000	\$99,999,999.99	5
\$100,000,000	\$119,999,999.99	6
Thereafter for each increment of \$20 million, goal is increased by one trainee		

3. The OJT program trainee goal for this project is 41 trainees.
4. The Contractor will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.
5. In the event that Contractor subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The Contractor should insure that this training special provision is made applicable to such subcontract. However, Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision.

6. The Contractor shall make every effort to ensure minorities and women are enrolled and trained in the program. The Contractor shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.
7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.
8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of Contractor and aims to train and upgrade employees to journey worker status.
9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.
10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.
11. The number of trainees shall be distributed among the work classifications on the basis of Developer's needs and the availability of journey worker in the various classifications.
12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, Contractor's records should document the findings in each case.
13. At or before contract execution, Contractor must submit the Contractor OJT Plan form to the Department's Office of Civil Rights (OCR). The plan shall specify how Contractor intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training.
14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.
15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.
16. The OCR must approve all proposed apprentices and trainees before training begins. The Contractor must submit the Federal OJT Enrollment Form in order for training to be counted toward the project goal and be eligible for reimbursement. The Contractor shall provide each trainee with a copy of the training program he or she will follow.
17. On a monthly basis, Contractor shall submit the Federal OJT Monthly Reporting Form to the Department's Strategic Projects office(s) and the OCR. The monthly reporting form will

include the number of hours trained and training status. If a trainee is terminated, Contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

18. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.
19. If requested, Contractor may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

This reimbursement will be made regardless of whether Contractor receives additional training program funds from other sources, provided such other program requirements do not specifically prohibit Contractor from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to Contractor if the trainees are concurrently employed on a federal-aid project and when Contractor: contributes to the cost of the training, or provides the instruction to the trainee, or pays the trainee's wages during the offsite training period.

No payment shall be made to Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by Contractor and evidences a lack of good faith on the part of Contractor in meeting the requirements of this Training Special Provision.

20. Detailed program reporting requirements and procedures, reporting forms, and the list of approved training classifications are found in the OJT program manual, which can be obtained upon request by contacting the OCR.

**IMPORTANT NOTICE TO SUBCONTRACTORS**

By the 20th day of each month, report to the Contractor Representative the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
- the number of Contractor and subcontractor related incidents and injuries that involved a third party.

An “incident” is defined as any work-related occurrence that had the potential to cause bodily harm but caused only damage to vehicles, equipment, materials, etc.

An “injury” is defined as an OSHA recordable injury.

Use the form prescribed by the Department for submitting this information. Failure to submit this information to the Engineer by the 20th day of each month will result in the Department taking actions including but not limited to withholding estimates and suspending the work. This reporting will not be paid for directly but will be considered subsidiary to items of the Contract.

**EXHIBIT K****CONTRACTOR'S JOB TRAINING PLAN / SMALL BUSINESS OPPORTUNITY PLAN****On the Job Training Plan****Preface**

This On-The-Job Training (OJT) Plan describes the requirements Flatiron/Dragados JV intends to meet with regards to the OJT goals for the design and construction work on the Project. This plan is based upon the Instructions to Proposers (ITP), published by Texas Department of Transportation (TxDOT) Comprehensive Development Agreement (CDA or the Contract), US 181 Harbor Bridge Replacement, Request for Proposals dated October 2, 2014 (as amended).

**Scope**

This document addresses the approach to develop, conduct, and administer highway construction training on the US 181 Harbor Bridge Replacement Project. This document outlines the following:

- Methods to achieve the OJT participation goals.
- Methods to comply with Federal and State laws.
- Cross references to parts of the Project Management Plan identifying the approach to maximize participation through Final Acceptance.
- Approach to develop and implement on-the-job training and apprentice programs.
- Employee and Employee outreach program to encourage participation.
- Framework for identifying qualified trainees and apprenticeships.
- Reporting requirements to TxDOT regarding OJT participation and certification.

**Terms and Abbreviations**

- Equal Employment Opportunity (EEO)
- Department of Labor (DOL)
- Federal Highway Administration (FHWA)
- Texas Department of Transportation (TxDOT)
- On-the-Job Training Program (OJT)
- Flatiron/Dragados JV

**References**

*23 Code of Federal Regulations section 230.111 Implementation of special requirements for the provision of on-the-job training.*

*Flatiron/Dragados JV Technical Proposal*

*TxDOT Form 2201: Federal On-the-Job Training Program Enrollment Form*

*TxDOT Form 2202: Federal On-the-Job Training Program Monthly Reporting Form*

**1. Introduction**

The objective of this document is to describe Flatiron/Dragados JV's approach to meet the goals and objectives regarding the training special provisions conducted in accordance with Texas Department of Transportation implementation of 23 U.S.C. § 140 (a). The TxDOT OJT Special Provision is to train and upgrade minorities and women toward journey worker status. Therefore, Flatiron/Dragados JV's ultimate goal for our OJT program on this Project is to offer equal

opportunity for the training and advancement of minorities, women and disadvantaged persons toward the journey-level status within the highway construction trades. This training commitment is not intended and shall not be used to discriminate against any applicant for training, whether a member of a minority group or not.

## **2. On the Job Training**

Flatiron/Dragados JV is committed to actively recruiting, hiring, and training a qualified workforce providing uninterrupted labor to complete the Project on-time and within budget. TxDOT has identified the number of trainees to be included on this project to be 39. Where possible, dependent upon the needs of the job, Flatiron/Dragados JV will continue to train persons after the goal has been met. To do so, we will utilize the diverse labor resources throughout the State of Texas to locate and employ individuals interested in working on the Project.

Flatiron/Dragados JV's OJT training program will provide our employees with hands on training to increase their knowledge and skill-set resulting in a more productive and efficient workforce. We will partner with employment organizations and trade programs to recruit and train workforce candidates. Training will be focused on teaching the skills required to perform various job functions as well as other skills to gain employment and retention in the industry not only for this project but future opportunities. Some of the training areas our team has identified as relevant to the Project include the following:

- Heavy Equipment Operator
- Carpenter
- Cement Mason
- Laborer (Utility, etc.)
- Operating Engineer

Each OJT candidate will begin with a two-week probationary period that will allow us to evaluate the candidate's work habits and capabilities and also allow the candidate to experience the work requirements and job conditions. Upon satisfactory completion of the two-week period, the trainee will be officially enrolled in the OJT Program. Each trainee will then be provided with the training program overview and program requirements. The duration of the OJT programs will be specific to the position. The trainee will then be assigned to a knowledgeable employee who will direct, review and support the trainee. The Design Build Joint Venture will hold hands-on training events at the Project site and off-site supplementary training when necessary. Our goal is to make our workforce stronger through the development, training and retention of long-term employees that continue to benefit to the local workforce, economy, and TxDOT through future projects.

### **2.1 Commitment to On-The-Job Training**

To meet the objectives of this plan, Flatiron/Dragados JV and its subcontractors shall be committed to maximizing utilization under the OJT provisions that TxDOT created along with FHWA to address the under-utilization of minority and female workers in the construction trades. Flatiron/Dragados JV may elect to accomplish training as part of the work of a

subcontractor; however, Flatiron/Dragados JV will retain the responsibility for complying with the general provisions and requirements of On the Job Training. To that end, Flatiron/Dragados JV and its subcontractors will be guided by two main principles: (1) Affirmative Action Commitment - to be fair and impartial in all relations with persons while recruiting, hiring, and training a workforce that mirrors the community in the representation of skilled and craft laborers in all trades and levels and (2) Equal Employment Opportunity Commitment – to set forth results-oriented policies and commitments of good faith to attain fairness and equity in the administration of all employment practices such as recruiting, hiring, training, job assignments, and more.

## **2.2 Approach to Employment and Training**

Flatiron/Dragados JV believes that an effective approach to on-the-job training cannot be passive. We are aggressive in both the identification and the elimination of inequitable policies, practices and procedures that could result in unlawful employment discrimination and the continued under-utilization of minority and female workers within our workforce. Our approach to employment education and training benefits everyone, at all levels, and fosters upward mobility and continued employment. Flatiron/Dragados JV will utilize a comprehensive approach to inform, assist, educate and train individuals seeking employment. These steps are described as follows.

- ✓ Inform: We conduct consistent and direct recruitment through public and private sources most likely to yield minority and women trainees. We document our recruitment efforts and ensure there is no discrimination in the dissemination of information regarding program opportunities. We discuss OJT at outreach events and public meetings and talk directly with interested applicants. We advertise locally to inform individuals in the project area of the various work opportunities.
- ✓ Assist: Evaluate potential trainees and identify any obstacles that could impede their success in the OJT program. Flatiron/Dragados JV will continually monitor our trainees to identify any social or economic issues that may cause obstacles for them by establishing an “open door” policy for early discussion.
- ✓ Educate: All OJT and apprenticeship programs will be of the Department of Labor industry standard for trade employees. Subsequently, for non-trade trainees we have training, and project personnel to help foster and maintain a qualified, diverse workforce. We will provide on-site training and presentations that include, but are not limited to, New Employee Orientation, Tool Training, Equipment Training, Daily Tool Box Meetings, Safety Training, Environmental Training, Hazard Analysis Review, Hazmat Response Procedures, Emergency Protocol, and Standard Operating Procedures.
- ✓ Train: Qualified individuals are enrolled in a formal On-The-Job training program. Our on-the-job training is intended to be primarily in apprentice able trades and shall include all approved programs.

## **2.3 Approach for Recruitment and Outreach**

All personnel who are engaged in direct recruitment for the project shall be knowledgeable regarding State and Federal procedures for recruiting, hiring and training skilled and craft labor workforce for this project. Flatiron/Dragados JV will make every effort to enroll minority groups and women trainees to the extent such persons are available. We will actively solicit

representatives and community leaders to refer qualified residents within the Corpus Christi area. Current employees and applicants for employment will be made aware of the training programs available and their entrance requirements to foster additional recruiting. Program awareness will be created through advertising, attendance at job fairs, job postings, workforce centers, state employment commission, community organizations, various other media and word of mouth. Our outreach and recruitment efforts include coordination and cooperation by various project personnel with local, State and national employee referral service programs. Recruiting will be from, but not limited to, the following sources: Current Employee Referrals, Local Trade Schools, and meetings with small business programs, firms and community organizations.

DRAFT

**EXHIBIT L****DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONSTRUCTION  
FOR NON-TRADITIONAL CONTRACTS**

**Description.** The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal for this Agreement is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this Agreement. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this Agreement.

**Article A. Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts**

**1. Policy.** In the performance of this Agreement Developer shall comply with 49 CFR Part 26, the Department's DBE Program, and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended. For a conflict between the language of this Special Provision and 49 CFR Part 26, the Department's DBE Program, or 43 Texas Administration Code, Chapter 9, Sections 9.200 – 9.242, as amended, 49 CFR Part 26, the Department's DBE Program, or 43 TAC, Chapter 9, Sections 9.200 – 9.242 as applicable, shall control.

- a.** Developer, its Contractor and subcontractors must meet the DBE goal set out in the Agreement by obtaining commitments from eligible DBEs or Developer must show acceptable evidence of Good Faith Efforts to meet the DBE goal.
- b.** The Developer shall solicit DBEs through reasonable and available means.
- c.** The Developer, Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Developer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by Developer to carry out these requirements is a material breach of this Agreement, that may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.
- d.** The Developer will include this Special Provision in all Contracts entered into by Developer. The Developer will also require any Contractor to include this Special Provision in any Contract that the Contractor enters into under this Agreement.
- e.** By signing this Agreement Developer certifies that the DBE goal as stated in the Agreement will be met by obtaining commitments from eligible DBEs or that Developer will provide acceptable evidence of good faith effort to meet the commitment within the time frame set out below.

**2. Definitions.** The definition for terms used in this Provision can be found in Exhibit 1 of this Agreement, 49 CFR, Part 26 or 43 TAC §9.202, Definitions. Terms not defined in Exhibit 1 of this Agreement, 49 CFR, Part 26, or 43 TAC §9.202 will for the purpose of this Special Provision be defined by the term's common usage.

**3. Developer's Responsibilities.** These requirements must be satisfied by Developer. Failure of Developer to meet these requirements may result in the issuance of Sanctions by the Department.

**a.** The Developer shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving TxDOT's DBE participation goals for the Agreement, including Developer's exercise of good faith efforts. The selected Developer's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Agreement. Each DBE Performance Plan must at a minimum include the following: specific categories of services and work anticipated for DBE participation on the project; schedule for submission of DBE commitment agreements based on Developer's initial project schedule; good faith efforts performed to date; good faith efforts that will be exercised by Developer following execution of the Agreement to achieve the DBE participation goal for the project; and the name, qualifications, responsibilities and contact information for the DBE liaison officer. The Developer shall also submit the completed Non-Traditional Contract form for the applicable type of commitment for each DBE that will be used to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of this Agreement. The DBE Performance Plan is subject to review, comment and approval by the Department prior to and as a condition of execution of the Agreement.

**b.** Should Developer to whom the Agreement is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

**c.** The Developer shall designate a DBE liaison officer who will administer Developer's DBE program and who will be responsible for all aspects of Developer's DBE program including maintaining all records and all reporting and correspondence with the Department on DBE issues.

**d.** A Developer who cannot meet the Agreement goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

**e.** The Developer and Contractors shall not terminate a DBE without written consent of the Department. The Developer must comply with 49 CFR §26 and 43 TAC §9.229, DBE Substitution and Termination, prior to terminating or substituting a DBE. This includes written notification to the DBE and the Department and providing the DBE five days in

which to respond to Developer's or Contractor's reasons for the termination. The Department will not consent to the termination or substitution if Developer or Contractor cannot demonstrate that the provisions of 49 CFR §26.53 and 43 TAC §9.229, DBE Substitutions and Terminations, have been followed. Terminating a DBE without Department approval is a violation of this Special Provision and can lead to Sanctions.

**f.** If the Department approves the termination of the DBE Contractor, Developer or Contractor shall make a good faith effort to replace the terminated DBE Contractor with another DBE, to the extent needed to meet the Agreement goal. The Developer shall submit the applicable Non- Traditional Contract commitment form for the substitute DBE firm(s). The Developer may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

#### **4. Eligibility of DBEs.**

**a.** The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's OCR Office. An update of the Directory can be found on the Internet at <http://www.txdot.gov>.

**b.** Only DBE firms certified at the time the commitments are submitted are eligible to be included in the information furnished by Developer as required under this Special Provision.

**c.** For purposes of the DBE goal on this project, DBEs are only allowed to perform work in the categories of work for which they are certified.

**d.** Only DBE firms certified at the time of execution of a Contract or subcontract are eligible for DBE goal participation.

#### **5. Determination of DBE Participation.**

When a DBE participates in a Contract, only the values of the work actually performed by the DBE, as detailed in 49 CFR §26.55, 43 TAC §9.231, Computing Work Performed by a DBE, 43 TAC §9.232, Commercially Useful Function, 43 TAC §9.233, Commercially Useful Function by DBE Trucking Firm, and 43 TAC §9.234, Counting Materials or Supplies Provided by DBE Manufacturer or Regular Dealer, shall be counted by Developer toward the DBE goal.

#### **6. Records and Reports.**

**a.** The Developer shall submit monthly reports, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of each calendar month. These reports will be required until all DBE Contracting or material supply activity is completed.

- b.** The Developer shall submit a final summary report of DBE payments upon completion of the project. The Developer will not receive final payment until this final report has been received and approved by the Department. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts must be submitted.
- c.** The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.
- d.** Negative reports are required when no activity has occurred in a monthly period.
- e.** The Developer shall provide copies of Contracts or agreements and other documentation upon request.
- f.** The Developer must provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 must be submitted each month and the month following the month when final acceptance occurred at the end of the project.
- g.** A copy of all reports submitted to the department and all supporting documentation must be retained for a period of 3 years following completion of the Contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT.

## **7. Compliance of Developer.**

- a.** To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor Developer's efforts to involve DBEs during the performance of this Agreement. This will be accomplished by a review of monthly reports submitted to the Department by Developer indicating Developer's progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.
- b.** The Developer shall receive credit toward the DBE goal based on actual payments to the DBE Contractor. The Developer shall notify the Department if Developer withholds or reduces payment to any DBE Contractor. The Developer shall submit an affidavit detailing the DBE Contract payments prior to receiving final payment for this Agreement.
- c.** The Developer's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Agreement. In such a case, the Department reserves the right to terminate this Agreement or seek sanctions under 43 TAC §9.237, Determination of Noncompliance; Sanctions.

## **Article B. Race-Neutral Disadvantaged Business Enterprise**

**Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for Contracts

and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this Contract as follows:

- 1.** The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for Contracts and Subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported to the Department each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."
- 2.** The Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate.

**EXHIBIT M**

**IMPORTANT NOTICE TO SUBCONTRACTORS**

By the 20th day of each month, report to the Contractor's Representative the number of incidents and injuries that occurred on the project the previous month. Report:

- the total number of incidents and injuries for the Contractor and all subcontractors, and
- the number of Contractor and subcontractor related incidents and injuries that involved a third party.

An "incident" is defined as any work-related occurrence that had the potential to cause bodily harm but caused only damage to vehicles, equipment, materials, etc.

An "injury" is defined as an OSHA recordable injury.

Use the form prescribed by the Department for submitting this information. Failure to submit this information to the Engineer by the 20th day of each month will result in the Department taking actions including but not limited to withholding estimates and suspending the work. This reporting will not be paid for directly but will be considered subsidiary to items of the Contract.

**EXHIBIT N**

**CONSTRUCTION QUALITY MANAGEMENT PLAN (COMP)**

Contractor and all Subcontractors shall fulfill construction quality expectations and requirements in accordance with ISO 9001 standards relating to quality systems, plans and audits. Project's quality policy is to use an effective, efficient and auditable Quality Management System that is planned and developed, in accordance with Contract's requirements.

Subcontractors are responsible for conducting their own Quality Control (QC) and Inspection in accordance with quality requirements detailed, but not limited to: Section 3, 5, 6 and 13 of the Contract.

A Construction Quality Assurance Firm (CQAF), will be conducting materials sampling and testing for the Project.

Quality Acceptance (QA) will be performed by a third service provider approved by the Owner. Also, Owner will be performing independent validation, verification, sampling and testing as Quality Oversight (QO).

**Quality Objectives**

- Project's quality management program focuses on planning and controlling the quality of design and construction input to yield predictable quality output. It covers every function and activity of our organization, including work performed by subcontractors and materials produced by fabricators and suppliers.
- Ensure the timely delivery of a quality project by performing our work right the first time to eliminate re-work and to meet or exceed Owner expectations.
- Develop, train, and focus personnel to achieve a culture of quality.
- Create an environment that encourages teamwork, collaboration, leadership, problem solving, and a high commitment to continuous improvement and the highest standard of quality.
- Produce an end product that is durable and of high quality.
- Establish a process that encourages continuous improvement of services and products.
- Establish the controls and protocols necessary to ensure the requirements of the Contract are met.

**EXHIBIT O**

**LIEN WAIVERS**

**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

PROJECT: US 181 Harbor Bridge Replacement Project

JOB NO.:

On receipt by the signer of this document of a check from Flatiron/Dragados, LLC in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_ (*payee or payees of check*) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer's position that the signer has on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_ (*job or material description*).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this is progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project provided for or to the above referenced project up to the date of this waive and release.

DATE: \_\_\_\_\_

\_\_\_\_\_ (*Company Name*)

BY : \_\_\_\_\_ (*Signature*)

\_\_\_\_\_ (*Title*)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_ (*title*) of \_\_\_\_\_ (*subcontractor/supplier*), known to me or proved through photo identification.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires \_\_\_\_\_

**NOTICE:**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a condition release form.**

**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

PROJECT: US 181 Harbor Bridge Replacement Project

JOB NO.:

The signer of this document has been paid and has received a progress payment in the sum of \$ \_\_\_\_\_ for all labor, services, equipment, or materials furnished to the project for Flatiron/Dragados, LLC on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_(description of work performed/material delivered). The signer therefore waives and releases any mechanic’s lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer’s position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer’s laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

DATE: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

BY : \_\_\_\_\_ (Signature)

\_\_\_\_\_ (Title)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_ (title) of \_\_\_\_\_ (subcontractor/supplier), known to me or proved through photo identification.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

PROJECT: US 181 Harbor Bridge Replacement Project

JOB NO.:

On receipt by the signer of this document of a check from Flatiron/Dragados, LLC in the sum of \$\_\_\_\_\_ payable to \_\_\_\_\_(payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer's position that the signer has on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_(job or material description).

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or final payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this is final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project provided for or to the above referenced project up to the date of this waive and release.

DATE: \_\_\_\_\_

\_\_\_\_\_ (Company Name)

BY : \_\_\_\_\_ ( Signature)

\_\_\_\_\_ (Title)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_ (title) of \_\_\_\_\_ (subcontractor/supplier), known to me or proved through photo identification.

\_\_\_\_\_

Notary Public in and for the State of Texas

My commission expires \_\_\_\_\_

**NOTICE:**

**This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.**

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

PROJECT: US 181 Harbor Bridge Replacement Project

JOB NO.:

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC regarding the Project on the property of the Texas Department of Transportation located in Corpus Christi, Texas to the following extent: \_\_\_\_\_ (*description of work performed/material delivered*). The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute released to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a final payment for all labor, services, equipment, or materials furnished to the property or to Flatiron/Dragados, LLC as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and supplier for all work, materials, equipment, or services provided for or to the above referenced project provided for or to the above referenced project up to the date of this waive and release.

DATE: \_\_\_\_\_

\_\_\_\_\_ (*Company Name*)

BY : \_\_\_\_\_ (*Signature*)

\_\_\_\_\_ (*Title*)

SUBSCRIBED AND SWORN TO before me on this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by \_\_\_\_\_ (*title*) of \_\_\_\_\_ (*subcontractor/supplier*), known to me or proved through photo identification.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires \_\_\_\_\_