

SERVICES AGREEMENT

This agreement (the “**Agreement**”) made as of this _____ day of _____, 2018, sets forth the agreement between the following parties in connection with the Project identified below.

Contractor: Flatiron/Dragados, LLC, a corporation incorporated under the laws of Delaware, and having a place of business at 500 North Shoreline, Suite 500, Corpus Christi, Texas 78401

Services Provider: [name] of [insert correspondence address]

Project: US-181 Harbor Bridge Replacement Project Corpus Christi, Texas

Owner: Texas Department of Transportation

Developer: N/A

Services: [brief description of services, e.g. traffic control services, consultancy, etc.]

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Services Provider agree as follows:

ARTICLE 1 SCOPE OF SERVICES

1.0 The Services Provider agrees to perform the following described work (hereinafter, “Work” or “Services”) for the benefit of Contract in its performance of its obligations under a contract between Contractor and Developer (“Prime Contract”). Such services are described in detail in Exhibit A attached hereto.

1.1 Agreement Documents. The documents consist of this Agreement and the following listed documents, which are all incorporated by reference and made a part hereof:

Exhibit “A” – Scope of Work

Exhibit “B” – Schedule of Fees

Exhibit “C” – Insurance Requirements

Exhibit “D” – Contract Required Provisions

Exhibit “E” – Subcontractor/Service Provider Disputes under the Prime Contract

Exhibit “F” – Jobsite Rules, Safety Requirements and Subcontractor/Service Provider

Exhibit “G” – Federal Requirements

Exhibit “H” – DBE Special Provisions and Required Contract Provision Federal-Aid
Construction Contracts

Exhibit “I” – Partial Lien Waivers and Affidavits Format

- 1.2 Professional Manner. Services Provider, or such employees or agents of Services Provider acting on his, her or its behalf, shall perform the Services described in this Agreement in a professional, competent, efficient and satisfactory manner. Services are described in terms of expected results. The manner and means of performance of the Services shall be determined solely by Services Provider; provided Contractor may set specifications for results, and the parties may agree to a completion schedule and Service Provider shall comply with all Contractor safety protocols as described in Article 4.
- 1.3 Own Materials. Services Provider shall provide his, her or its own implements and materials, as applicable; provided that Contractor may provide, at its sole discretion, necessary materials and equipment. Services Provider shall determine, with input from Contractor, when it will perform the Services and whether the Services can be most effectively provided at Contractor's premises, at Services Provider's offices or at other locations.
- 1.4 Standard of Care. The Services provided by Services Provider shall conform to standards of practice customary for the category of professional services described in this Agreement and any applicable provisions of the Prime Contract. For example, if Services as defined herein are for engineering services, Services Provider shall conform to standards of engineering practice customary in the engineering profession for services of a similar nature and in accordance with the applicable provisions of the Prime Contract.
- 1.5 Re-performance of Services. The Services Provider is required to re-perform in a timely fashion any Services rejected by the Contractor, Developer, Owner or any governing authority having jurisdiction over the Services for failing to comply with the terms of this Agreement. The Services Provider shall correct at its own cost and time and bear

the expense of additional services for any nonconforming Services for which it is responsible.

- 1.6 Compliance with Laws. Services Provider shall be solely liable and responsible for compliance with all federal, state and local laws, rules and regulations regarding (i) payment of Services Provider's employee wages, taxes, unemployment compensation and other employment related insurance and benefits; (ii) filing of all required reports; (iii) maintaining all appropriate licenses and certifications; (iv) health, safety and all other employment matters; and (v) compliance with all Federal and State laws, rules and regulations regarding equal employment opportunity, employment of veterans, employment of the handicapped, utilization of minority enterprises, age discrimination, including the extent applicable to the manufacture and/or sale of goods purchased hereunder or the contracting or subcontracting of services for the Work hereunder.
- 1.7 Changes. The Contractor may, at any time by written order of Contractor or Contractor's representative and without notice to Services Provider's sureties, make changes in, additions to and deletions from the Work to be performed under this Agreement. Services Provider shall promptly proceed with the performance of this Agreement as so changed. For changes directed by Contractor, Services Provider shall be entitled to an adjustment in the Agreement price for direct costs incurred provided that Services Provider provides Contractor written notice of its intent to claim such an adjustment prior to performing such changed Work. Failure of the Services Provider to provide such notice shall constitute a waiver of such claims by Services Provider.

ARTICLE 2

SCHEDULE

- 2.0 The Services shall be provided in a timely manner and in accordance with the schedule of services and the agreed upon deadlines
- 2.1 Time is of the essence for Services Provider's completion if the Services and the Services Provider agrees to see to the performance of its work and the work of its Services Providers and suppliers so that the entire Project may be completed in accordance with the Prime Contract and the Schedule of Services.
- 2.2 If Services Provider fails to complete its Services within the agreed upon schedule and deadlines, Services Provider shall indemnify Contractor for all damages (or, if

applicable, acceleration costs incurred to avoid such damages) actually incurred by Contractor to the extent caused by Services Provider.

ARTICLE 3

COMPENSATION FOR SERVICES

- 3.0 Contractor agrees to pay the Services Provider for the performance of Services in accordance with the rate schedule attached hereto as Exhibit B. These rates are inclusive of all overhead, profit, fees and taxes.
- 3.1 Services Provider shall submit to Contractor every month a certified statement, sworn to if required, showing in detail all amounts due to Services Provider for work performed during the previous month as provided in this Article 3, including backup documents in respect of the Services as reasonably required by Contractor. Payment by Contractor to Services Provider of approved amounts shall be made within 30 days after receipt and approval by Contractor of an invoice from Services Provider.
- 3.2 Contractor may deduct from any amounts due or to become due to Services Provider any amount owed by the Services Provider or Services Provider's affiliated entities to Contractor or Contractor's affiliated entities. In the event of a breach by Services Provider of any terms of this Agreement, Contractor shall have the right to retain out of payments due or to become due to the Services Provider amounts sufficient to satisfy the Contractor from any loss, damage or expense incurred by Contractor.

ARTICLE 4

SAFETY

- 4.0 The Services Provider is required to perform the Services in a safe and reasonable manner. The Services Provider shall seek to avoid injury, loss or damage to persons or property by taking reasonable 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 Services; 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 Services.
- 4.1 The Services Provider 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.

- 4.2 The Services Provider shall implement appropriate safety measures, in strict compliance to OSHA pertaining to the Services, 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.
- 4.3 The Services Provider is required to promptly remedy any loss or damage caused to the work, materials, equipment and property referred to in clauses 4.0(b) and 4.0(c), if said loss or damage is not covered by insurance required under this Agreement, but only to the extent caused in whole or in part by the Services Provider and/or persons or entities performing work or services for or on behalf of the Services Provider, regardless of tier, who have furnished labor, material or services relating to this Services Agreement and for whose acts the Services Provider may be liable.
- 4.4 The Services Provider is required to designate an individual at the site in the employ of the Services Provider who shall act as the Services Provider's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Services Provider in writing to the Contractor, the designated safety representative shall be the Services Provider's project superintendent.
- 4.5 The Services Provider 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.
- 4.6 Prevention of accidents at the site is the responsibility of the Contractor, Services Provider, and all other subcontractors, persons and entities at the site. Establishment of a safety program by the Contractor shall not relieve the Services Provider or other parties of their safety responsibilities. The Services Provider 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 this Agreement. The Services Provider shall comply with the reasonable recommendations of insurance companies having an interest in the Project, and shall stop any part of the Services which the Contractors deems unsafe until corrective measures satisfactory to the Contractor shall have been taken. The Contractor's failure to stop the Services Provider's unsafe practices shall not release the Services Provider of the responsibility therefore.

The Services Provider 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 Services Provider 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 Services Provider's failure to comply with applicable safety requirements. Services Provider agrees to indemnify, defend and hold harmless Contractor from any and all liability and damages, fines, costs and attorney's fees incurred by Contractor on account of Services Provider's failure to comply with all safety standards, laws and governmental regulations applicable to the work.

ARTICLE 5 INDEMNIFICATION

5.0 SERVICE PROVIDER 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 AGREEMENT OR AGREEMENT DOCUMENTS BY SERVICE PROVIDER;**
- (b) THE FAILURE OR ALLEGED FAILURE BY SERVICE PROVIDER TO COMPLY WITH THE GOVERNMENTAL APPROVALS, ANY APPLICABLE ENVIRONMENTAL LAWS OR OTHER LAWS (INCLUDING LAWS REGARDING HAZARDOUS MATERIALS MANAGEMENT) RELATED TO THE 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 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 SERVICE PROVIDER;

- (d) THE ACTUAL OR ALLEGED CULPABLE ACT, ERROR, OMISSION, NEGLIGENCE, BREACH OR MISCONDUCT OF SERVICE PROVIDER IN OR ASSOCIATED WITH PERFORMANCE OF THE 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 SERVICE PROVIDER WITH RESPECT TO ANY PAYMENT FOR THE WORK MADE TO OR EARNED BY SERVICE PROVIDER;**
- (f) ANY AND ALL STOP NOTICES OR LIENS FILED IN CONNECTION WITH THE 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 SERVICE PROVIDERS FOR FAILURE TO PAY SUMS DUE FOR THEIR WORK OR SERVICES, PROVIDED THAT CONTRACTOR HAS PAID ALL UNDISPUTED AMOUNTS OWING TO SERVICE PROVIDER WITH RESPECT TO SUCH WORK;**
- (g) ANY ACTUAL OR THREATENED SERVICE PROVIDER RELEASE OF HAZARDOUS MATERIALS;**
- (h) THE CLAIM OR ASSERTION BY ANY OTHER OWNER CONTRACTOR OR SERVICE PROVIDER: (I) THAT SERVICE PROVIDER FAILED TO COOPERATE REASONABLY WITH SUCH OTHER OWNER CONTRACTOR OR SERVICE PROVIDER, SO AS TO CAUSE INCONVENIENCE, DISRUPTION, DELAY OR LOSS, EXCEPT WHERE SERVICE PROVIDER WAS NOT IN ANY MANNER ENGAGED IN PERFORMANCE OF THE WORK OR (II) THAT SERVICE PROVIDER INTERFERED WITH OR HINDERED THE PROGRESS OR COMPLETION OF WORK BEING PERFORMED BY SUCH OTHER OWNER CONTRACTOR OR SERVICE PROVIDER, 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 SERVICE PROVIDER;**
- (i) SERVICE PROVIDER'S PERFORMANCE OF, OR FAILURE TO PERFORM, THE OBLIGATIONS UNDER ANY UTILITY AGREEMENT, OR ANY DISPUTE BETWEEN SERVICE PROVIDER AND A UTILITY OWNER AS TO WHETHER WORK RELATING TO A UTILITY ADJUSTMENT CONSTITUTES A BETTERMENT;**
 - (j) SERVICE PROVIDER'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 SERVICE PROVIDER UNDER THE AGREEMENT DOCUMENTS OR (II) THE ACTS OR OMISSIONS OF SERVICE PROVIDER 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 SERVICE PROVIDER;**
 - (k) THE FRAUD, BAD FAITH, ARBITRARY OR CAPRICIOUS ACTS, OR VIOLATION OF LAW BY SERVICE PROVIDER IN OR ASSOCIATED WITH THE PERFORMANCE OF THE WORK;**
 - (l) INVERSE CONDEMNATION, TRESPASS, NUISANCE OR SIMILAR TAKING OF OR HARM TO REAL PROPERTY BY REASON OF: (i) THE FAILURE OF SERVICE PROVIDER TO COMPLY WITH GOOD INDUSTRY PRACTICES, REQUIREMENTS OF THE AGREEMENT DOCUMENTS, PROJECT MANAGEMENT PLAN OR GOVERNMENTAL APPROVALS RESPECTING CONTROL AND MITIGATION OF CONSTRUCTION ACTIVITIES AND CONSTRUCTION IMPACTS, (ii) THE INTENTIONAL MISCONDUCT OR NEGLIGENCE OF SERVICE PROVIDER, OR (iii) THE ACTUAL PHYSICAL ENTRY ONTO OR ENCROACHMENT UPON ANOTHER'S PROPERTY BY SERVICE PROVIDER; AND**
 - (m) ERRORS, INCONSISTENCIES OR OTHER DEFECTS IN THE DESIGN (IF APPLICABLE TO THE WORK), CONSTRUCTION, OPERATION OR MAINTENANCE (IF APPLICABLE TO THE WORK) OF THE WORK OR OF UTILITY ADJUSTMENTS INCLUDED IN THE WORK.**

ARTICLE 6 INSURANCE

- 6.0 Throughout the term of this Agreement and thereafter as applicable, Services Provider shall maintain insurance of the type and on the terms and conditions set forth in Exhibit C attached hereto and made a part hereof for all purposes.
- 6.1 Nothing contained in this Article 6 shall be construed as a limitation of Services Provider's liability for damage or injury, including death, which arises out of Services Provider's performance of its obligations under this Agreement.

ARTICLE 7 TERMINATION

- 7.0 This Agreement may be terminated for cause by either party at any time in the event of breach by the other party of its material obligations under this Agreement upon seven days written notice by registered or certified mail, return receipt requested. The notice shall contain the stated cause(s) for termination provided that the notified party may cure its default within such period (or commence to and expeditiously continue to cure same if such default cannot be cured within 7 days), in which event the termination notice shall be deemed null and void.
- 7.1 Further, in its sole discretion, Contractor may, at any time, terminate this Agreement for its convenience upon giving written notice to Services Provider. Termination shall take effect immediately upon the date set forth in the notice. Services Provider shall be entitled to be paid for all services satisfactorily rendered and expenses incurred to the date of termination but in no event shall Services Provider be entitled to consequential damages or loss of profits on services not yet rendered.
- 7.2 Upon termination, Services Provider shall immediately discontinue the Services, vacate the site and return all material and equipment belonging to Contractor.

ARTICLE 8 RECORDS

- 8.0 Services Provider shall (a) maintain orderly files of correspondence, reports, work product, and all other documents related to the Project, and (b) maintain records and

accounting procedures sufficient to support invoices and such records shall be subject at reasonable times to inspection and audit by Contractor.

- 8.1 All of the foregoing data and records shall be made available to Contractor or its representative(s) promptly upon request and for two years from the date of final payment, or five years after the date the record or document is generated. Notwithstanding the foregoing, the Contractor may instruct Services provider to retain all records which relate to claims and disputes until any later date that such claims, disputes and actions are finally resolved.

ARTICLE 9 PROPRIETARY INFORMATION

- 9.0 Contractor may disclose to Services Provider, or Services Provider may come into contact with or observe, business information, know-how, marketing plans, inventions and other intellectual property rights (all of which are hereinafter jointly referred “Proprietary Information”) that are either the property of Contractor or controlled by Contractor. Services Provider acknowledges that Contractor’s creative briefing, instructions and shared information are Proprietary Information. Such Proprietary Information shall be held in strict confidence by Services Provider and for a period of ten years shall not be disclosed to any third party without the express prior written consent and permission of an officer of Contractor, except as otherwise required by law or if any such Proprietary Information becomes known to the public through no fault of Services Provider. Services Provider shall reasonably safeguard all written material that Contractor supplies to Services Provider. Services Provider shall not copy or duplicate such material (except for internal purposes) without Contractor’s prior written consent and shall return such materials to Contractor upon completion of the services being provided to Contractor or upon Contractor’s request. In the event of any breach or threatened breach of the foregoing provisions of this paragraph, damages to be suffered by Contractor shall not be fully compensable in money damages alone; accordingly, Contractor shall, in addition to other available legal or equitable remedies be entitled to an injunction against such breach or threatened breach without any requirement to post bond as a condition of such relief. With regard to information designated by Contractor as a trade secret, Services Provider shall not disclose such information to any third party other than Services Provider’s lawyers or accountants, without the express written consent of Contractor, except as otherwise required by law or if the trade secret becomes known to the public through no fault of Services Provider. This obligation has no limitation of time.

ARTICLE 10 PROPRIETARY RIGHTS

10.0 Services Provider shall have no proprietary interest in the work product created, produced or developed by Services Provider during the course of its engagement, but the work product shall be owned solely and exclusively by Contractor. To the extent permissible under applicable law, the results and proceeds of such work product shall be deemed for hire within the definition of 17 U.S.C. Section 101. To the extent not permissible and to the extent rights other than copyrights are included, Services Provider expressly assigns all rights to copyrights, trademarks, patents, trade secrets or other proprietary rights throughout the world in such work product to Contractor, free of all liens, claims or encumbrances. Upon request, Services Provider shall execute and deliver all documents requested by Contractor to effectuate or perfect the foregoing and this Agreement. Services Provider appoints the officers of Contractor who shall from time-to-time hold such offices as Services Provider's attorney-in-fact to execute and deliver such documents if Services Provider shall fail to do so within five business days following Contractor's request. The foregoing appointment is a power coupled with an interest and shall be irrevocable.

ARTICLE 11 DISPUTE RESOLUTION

11.0 Arbitration. If any controversy or claim arises out of this Agreement and if such dispute cannot be settled through negotiation, the parties shall submit such dispute to binding arbitration administered by the American Arbitration Association in accordance with the Construction Industry Arbitration Rules. The seat and venue of arbitration shall be Houston, TX, unless another location is mutually agreed upon in writing. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Notwithstanding the foregoing, claims and disputes arising from Services provided or to be provided under the Prime Contract, will be dealt with in accordance with the provisions of section 19 of the Prime Contract, excerpted here as Exhibit E.

11.1 Continuing Work. At all times during the dispute resolution procedures set forth in this Services Agreement, the Services Provider shall continue with the performance of the Services and its obligations, including any disputed Services or obligations, diligently and without delay, in accordance with this Services Agreement, except to the extent enjoined by order of a court or otherwise approved by the Contractor in its discretion. The Services Provider 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 Services even if the Services Provider's position in connection with the dispute ultimately prevails. In addition, during the pendency of resolution of a dispute relating to the Services, the Contractor and Services Provider shall continue to comply with all provisions of this Agreement.

ARTICLE 12 OWNER-REQUIRED CLAUSES

- 12.0 Without limiting the terms and conditions of this Agreement, and in addition thereto, Services Provider and its sub-consultants and/or suppliers of every tier shall comply with the Owner-required contract clauses attached hereto as Exhibit D (to the extent applicable and as appropriate). Services Provider shall include such terms and conditions in each agreement with its sub-consultants and/or suppliers of any tier to ensure compliance by the sub-consultants and/or suppliers with all applicable requirements of the Prime Contract.

ARTICLE 13 MISCELLANEOUS PROVISIONS

- 13.0 Not an Employee. Services Provider specifically agrees and warrants that it is an independent contractor within the meaning of this term in the state where the Work is performed and will remain so for the life of this Agreement. Neither Services Provider, nor any of his, her or its employees, shall be an employee of Contractor for federal or state tax purposes or for any other purpose. It is not intended that any employer-employee relationship be established between Contractor and Services Provider, either expressly or by implication. Services Provider shall not be entitled to participate in any retirement, medical or other employee benefit plans provided by Contractor to its employees. No provision of this Agreement shall be interpreted to conflict with the parties' intent that the legal status of Services Provider is to be that of an independent contractor only, and not an employee of Contractor.
- 13.1 Not an Agent. Services Provider is not an agent of Contractor and has no authority to act on behalf of or to represent to anyone that he, she or it is authorized to act on behalf of or to bind Contractor in any manner.

- 13.2 Assignment. Services Provider may not assign, transfer, delegate or encumber its interest in or duties under this Agreement without the prior written consent of Contractor, and any such assignment shall be void.
- 13.3 Amendments. This Agreement may not be orally amended, modified or terminated. No amendment or modification shall be binding upon Contractor unless signed by its authorized representative. This Agreement shall bind the successors and permitted assigns of the respective parties.
- 13.4 Entire Agreement. All understandings heretofore had between the parties are merged in this Agreement and its documents, which alone fully and completely expresses their Agreement.
- 13.5 Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby, and such remaining provisions shall remain in full force and effect. The invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.
- 13.6 No Third Party Beneficiaries. Nothing contained in this Agreement shall be deemed to create a contractual relationship with or a cause of action in favor of any third party against Services Provider or Contractor.
- 13.7 Laws. Services Provider shall comply with all applicable laws, rules and regulations, and represents to Contractor that it has obtained all licenses necessary to provide the services required, if any.
- 13.8 Applicable Law. This Agreement shall be construed under the laws of the State of Texas.
- 13.9 Counterparts. This Agreement 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.

ARTICLE 14
CODE OF BUSINESS ETHICS AND CODE OF CONDUCT

Contractor has a longstanding reputation for honesty and integrity in its business dealings and for its corporate policies promoting lawful and ethical behavior. Contractor is committed to upholding that reputation and has adopted policies which govern the actions of all of its employees. Pursuant to those policies, Contractor employees are prohibited from accepting bribes or kickbacks, in any form and, further, are prohibited from accepting goods or services provided by a subcontractor, supplier or vendor for the personal benefit of the employee, his or her relatives, or any entity in which the employee or his or her relatives has a personal interest. This prohibition includes, but is not limited to; work performed on an employee's residence and applies regardless of whether the beneficiary of the goods or services pays for them. Therefore, if the Service Provider offers or provides a bribe or kickback to any employee, or offers or provides goods or services to any employee, his or her relatives, or any entity in which the employee or his or her relatives has a financial interest, the Service Provider will be considered to be in material breach of this Agreement. Service Provider undertakes the commitment to advise Contractor of any action by any entity or person associated with the project that Service Provider believes violates any applicable law, rule or regulation. Service Provider's violation of any of the foregoing shall be considered as Service Provider's failure to perform its obligation, under the terms and conditions of this Agreement. Such failure shall be considered adequate and justifiable ground for Contractor to effectuate its rights and remedies under the termination provision of this Agreement. The provision, of this Article must be incorporated into any subcontract Service Provider enters into in connection with the performance of the Work. Additionally, the Contractor, a subsidiary of Flatiron Constructors, Inc. and Dragados USA, Inc., has adopted corporate practice policies applicable to this Agreement. Service Provider agrees to comply, and to cause its subcontractors to comply, with the Dragados USA, Inc. Code of Business Ethics and Code of Conduct for Business Partners set forth at: <http://www.dragados-usa.com/files/CodeofConduct2013.pdf>.

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

[Remainder of page intentionally left blank. Signature page follows]

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

FLATIRON/DRAGADOS, LLC.
(Contractor)

By: _____

Name (print): John Palmer

Title (print): Deputy Project Manager

Date: _____

FLATIRON/DRAGADOS, LLC
(Contractor)

By: _____

Name (print): Keith Armstrong

Title (print): Project Manager

Date: _____

SERVICE PROVIDER'S COMPANY NAME
(Service Provider)

By: _____

Name (print): _____

Title (print): _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

SCHEDULE OF FEES

EXHIBIT C
INSURANCE REQUIREMENTS

- 1.0 General. Prior to the commencement of the Work and through the duration of the Work, and for one year after completion of the Work, Services Provider shall obtain, at Services Provider's sole expense, and maintain in full force and effect during the term hereof, the following insurance coverage insuring Services Provider's operations. The minimum coverages shall be the greater of the Project Contract requirements or the following:
- 2.1 **Workers Compensation and Employee Liability Insurance:**
- 2.1.1 Statutory Workers Compensation (including occupational disease) in accordance with the laws of the state in which the Services are performed, including the Other States Endorsement.
- 2.1.2 Employers Liability Insurance with \$1,000,000 in limits for each of the following exposures: bodily injury by accident (each accident); bodily injury by disease (policy limit), and bodily injury by disease (each employee).
- 2.1.3 Waiver of Subrogation in favor of all parties referenced in Paragraph 2.2.6 below.
- 2.2 **Commercial General Liability** ("CGL") with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least \$2,000,000 per occurrence, \$4,000,000 aggregate and \$4,000,000 products/completed operations. The general aggregate shall apply on a per project basis. The limit may be provided through a combination of primary and umbrella/excess liability policies. The terms and conditions of coverage shall be provided through the use of ISO Coverage Form CG-00-01-1204 or its equivalent, and encompass at least the following:
- 2.2.1 X, C and U hazards, where applicable;
- 2.2.2 Independent Contractors;
- 2.2.3 Blanket Written Contractual Liability covering all Indemnity Agreements, including Article 5 "Indemnification" of the main body of this Agreement;
- 2.2.4 Products Liability and Completed Operations, with the provision that coverage shall extend for a period of at least twelve (12) months from Project completion or for any longer period if required elsewhere in the Agreement and/or the Prime Contract (such longer period shall take precedence);
- 2.2.5 CGL coverage written on an occurrence form;

- 2.2.6 Endorsement naming the Owner, Developer, Contractor, and their respective authorized representatives, shareholders, directors, officers, agents, Services Providers, employees, affiliates, successors, assigns, Contractor's and Contractors' members parents and affiliates (to the extent applicable), and their respective authorized representatives, shareholders, directors, officers, agents, suppliers, employees, affiliates, successors, assigns and any other entity or person as required in the Prime Contract as Additional Insureds. ISO Form CG 2010 and CG 2037 shall be used together to provide this coverage. The use of the latest ISO edition shall be acceptable;
- 2.2.7 Waiver of Subrogation in favor of all Additional Insureds; and
- 2.2.8 Policy to be primary as respects the coverage afforded the Additional Insureds and any insurance carried by the Additional Insureds shall be non-contributing.
- 2.3 **Commercial Automobile Liability** (including all owned, leased, hired and non-owned automobiles) with a combined single limit for Bodily Injury and Property Damage of at least \$1,000,000 per occurrence. The limit may be provided through a combination of primary and umbrella/excess liability policies. The parties referenced in Paragraph 2.2.6 above shall be named and covered as Additional Insureds.
- 2.4 **Umbrella and/or Excess Liability** policies may be used to comply with CGL, Commercial Automobile Liability and Employers Liability limits shown above. The parties referenced in Paragraph 2.2.6 above shall be named as Additional Insureds. The Umbrella and/or Excess Liability policies shall be written on a "follow form" basis.
- 2.5 A Certificate of Insurance indicating coverages applicable to and providing for thirty (30) days written notice prior to cancellation, non-renewal or material modification in any policy must be submitted, approved and available to Contractor, Attention Risk Manager, at the address set forth on the first page of the Agreement, prior to commencement of the Services.
- A Certificate of Insurance, when submitted to Contractor, constitutes a warranty by Services Provider that:
- 2.5.1 The general aggregate limit applies on a per project basis.
- 2.5.2 Blanket Contractual Liability under the Commercial General Liability Policy has been endorsed to cover the Indemnitees specified in Article 5 "Indemnification" of the main body of this Agreement.
- 2.5.3 The Commercial General Liability, Commercial Automobile Liability and Umbrella and/or Excess Liability Policies name as additional insureds the Owner, Developer,

Contractor, and their respective authorized representatives, shareholders, directors, officers, agents, Services Providers, employees, affiliates, successors, assigns, Contractor's and Contractor's members parents and affiliates and their respective authorized representatives, shareholders, directors, officers, agents, suppliers, employees, affiliates, successors, assigns and any other entity or person as required in the Prime Contract as Additional Insureds. ISO Form CG 2010 and CG 2037 shall be used to together to provide this coverage. The use of the latest ISO edition shall be acceptable.

- 2.5.4 With respect to the Umbrella and/or Excess Liability Insurance, the following policies are scheduled as primary:

Commercial General Liability

Commercial Automobile Liability

Employers Liability

- 2.5.5 The insurance policies for all Services Provider's insurance shall include a waiver of subrogation as follows:

“It is agreed that in no event shall these insurance companies have any right of recovery against the Owner, Developer, Contractor, and their respective authorized representatives, shareholders, directors, officers, agents, suppliers, employees, affiliates, successors, assigns, Contractor's and Contractor's members parents and affiliates (to the extent applicable) and their respective authorized representatives, shareholders, directors, officers, agents, Services Providers, employees, affiliates, successors, assigns or any other additional insured as required in the Prime Contract.”

- 2.5.6 The insurance policies shown are endorsed to be primary as respects any other insurance available to any Additional Insured.

The reverse side of the certificate must list each of the above Items “2.5.1” through “2.5.6”, and the following statement must precede the listing: “This certificate warrants that:”

- 2.6 All insurance carriers must: (i) be licensed in the State of Texas; and (ii) be rated at least A in Best's.
- 2.7 Should Services Provider engage sub-consultants, the same conditions applicable to Services Provider under these Insurance Requirements shall apply to each sub-consultant.

- 2.8 [Note: text in italics to be used only if Services Provider performs professional services]
Services Provider shall provide Professional Liability coverage consistent with minimum requirements of the Prime Contract.
- 2.8.1 Prior to execution of this Agreement, Services Provider shall deposit and cause each of its sub-consultants to deposit with Contractor, a Certificate of Insurance, together with all endorsements, certified by the insurer to be a true copy thereof, together with confirmation that all premiums due have been paid. Thereafter, certification of renewal coverage and premium payments shall be deposited with Contractor not less than ten (10) days before the expiration dates of the expiring policies. Certificates of Insurance replacing any expiring policies shall be delivered as aforesaid no more than ten (10) days after receipt by Services Provider accompanied by a confirmation that all premiums due have been paid.
- 2.8.2 The Professional Liability Policy shall have a Full Retroactive Coverage. The Professional Liability Policy shall provide that it may not be substantially modified or canceled without thirty (30) day's prior written notice to Contractor. The policy shall remain in place for a period of no less than three (3) years after substantial completion. The policy shall have an extended reporting period of not less than 3 (3) years after substantial completion of the Project.

EXHIBIT D**CONTRACT REQUIRED PROVISIONS**

The Service Provider shall assume toward the Contractor all obligations and responsibilities which the Contractor has assumed toward the Owner under the Contract to the extent such obligations and liabilities relate to the Service Provider's Work. In case of conflict between the terms of this Service Agreement and the Contract, the Service Provider Agreement shall control. The Contract has been and remains available to the Subcontractor for review via web link: <http://www.txdot.gov/business/partnerships/current-cda/harbor-bridge/executed-version.html>.

The provisions required by the Contract to be included in this Service Agreement are incorporated herein by reference to the extent they relate to the supply of the Project Supplies, including, without limitation, each of the provisions set forth below. Service Provider shall comply with all such provisions, and Service Provider 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. Capitalized terms used in this Exhibit D shall bear the meaning attributed to them in the Contract and this Service Agreement.

1. Service Provider shall perform its obligations under this SERVICE AGREEMENT in accordance with a standard of professional responsibility and commercial practice equal to the requirements of this SERVICE AGREEMENT and Good Industry Practice for work of similar scope and scale.
2. Service Provider agrees to carry out its obligations under this SERVICE AGREEMENT in accordance with the Contract, this SERVICE AGREEMENT, Governmental Approvals and applicable Law, including the applicable requirements of the DBE Performance Plan.
3. Without cost to Contractor or the Owner, Service Provider expressly permits assignment to the Owner or its successor, assign or designee of all of the Contractor's rights under this SERVICE AGREEMENT, 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 Service Provider's warranties, indemnities, guarantees and professional responsibility.
4. Service Provider acknowledges and agrees that any acceptance of assignment of this SERVICE 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 SERVICE AGREEMENT by Contractor or for any amounts due and owing under this SERVICE AGREEMENT for work or services rendered prior to assumption (but without restriction on the Service Provider's rights to suspend work or demobilize due to Contractor's breach).
5. Service Provider 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 Service Provider arising out of or relating to its recognition and attornment in reliance on any such notice.

6. Service Provider 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 its supply under this SERVICE AGREEMENT by each of Contractor and the Owner pursuant to section 20.5 of the Contract; and (c) provide progress reports to Contractor appropriate for the type of work it is performing sufficient to enable Contractor to provide the reports it is required to furnish the Owner under the Contract.
7. Service Provider acknowledges that Contractor has the right to terminate this SERVICE AGREEMENT in whole or in part upon any Termination for Convenience of the Contract without liability of Contractor or the Owner for Service Provider's lost profits or business opportunity. In particular, in the event of a termination for convenience by Owner, Service Provider will
 - (i) not be entitled to any anticipatory or unearned profit, or to any payment which constitutes consequential damages on account of the termination or partial termination;
 - (ii) abide by the terms of any Notice of Termination for Convenience or Notice of Partial Termination for Convenience by Owner;
 - (iii) accept any assignment of this SERVICE AGREEMENT or the Service Provider's Warranties (as such term is defined below) to Owner; and
 - (iv) execute any documents and perform any actions necessary to give effect to the terms of any Notice of Termination for Convenience or Notice of Partial Termination for Convenience and comply, and allow Contractor to comply, with the provisions of section 15.1 of the Contract.
8. Service Provider will participate in meetings between Contractor and the Owner, upon the Owner's request, concerning matters pertaining to this SERVICE AGREEMENT; provided, however, that all direction to Service Provider shall be provided by 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.
9. Service Provider will give evidence in any dispute resolution proceeding pursuant to section 19 of the Contract, if such participation is requested by either Contractor or the Owner.
10. Service Provider acknowledges that all Liens, claims and charges of Service Provider and its sub-subcontractors at any time shall not attach to any interest of the Owner in the Project or the Project ROW.
11. Service Provider covenants, which covenant shall survive termination of this SERVICE AGREEMENT, to promptly execute and deliver to Owner a new contract between Service Provider and the Owner on the same terms and conditions as this SERVICE AGREEMENT, in the event: (a) this SERVICE AGREEMENT is rejected by Contractor in bankruptcy or otherwise wrongfully terminated by Contractor and (ii) the Owner delivers request for such new contract following termination or expiration of the Contract.

12. Service Provider 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 of Texas.
13. The Parties acknowledge and agree that they may not amend any of the foregoing provisions in this **Exhibit D – Contract Required Provisions** without the prior consent of the Owner.
14. In the performance of its obligations under the SERVICE AGREEMENT, Service Provider at all times shall comply with all applicable federal and State labor, occupational safety and health standards, rules, regulations and federal and State orders.
15. Service Provider shall comply and require its Subcontractors to 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 (which is appended as Exhibit G of this SERVICE AGREEMENT). Service Provider shall deliver any certification required pursuant to such federal requirements to Contractor. In the event of any conflict between any applicable Federal Requirements and the other requirements of the Contract Documents, the Federal Requirements shall prevail, take precedence and be in force over and against any such conflicting provisions.
16. During all periods necessary for the performance of the scope of this SERVICE AGREEMENT, Service Provider will maintain all required authority, license status, professional ability, skills and capacity to perform its scope under this SERVICE AGREEMENT.
17. Service Provider shall comply with all requirements of all Laws applicable to the D&C Work, including Environmental Laws and the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), as amended.
18. Service Provider shall comply with the applicable requirements of the approved Project Management Plan.
19. Service Provider shall at all times coordinate and cooperate with Owner and its Authorized Representative to facilitate Owner's oversight activities.
20. Service Provider 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 scope of its obligations under this SERVICE AGREEMENT 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 Service Provider must comply according to the SERVICE AGREEMENT. Service Provider shall be liable to Contractor and the Owner for all loss, cost and expense attributable to any acts of commission or omission by Service Provider, its employees and agents resulting from the failure to comply therewith, including, but not limited to, any fines, penalties or corrective measures.
21. The Owner's DBE Special Provisions for Non-Traditional Contracts, applicable to the Project, are set forth in Exhibit 6 of the Contract (which is appended as Exhibit H of this SERVICE AGREEMENT). 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. Service Provider

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. The approved overall DBE participation goal for the Project, including construction and professional services, is established as 9% of the D&C Price. Service Provider shall exercise good faith efforts to achieve such DBE participation goal in the scope of this SERVICE AGREEMENT through implementation of Contractor's Owner-approved DBE Performance Plan related to the scope of this SERVICE AGREEMENT. Service Provider shall include provisions to effectuate the requirements of this subsection 21 in every sub-subcontract (including purchase orders and in every sub-subcontract for the scope of this SERVICE AGREEMENT), 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. Service Provider 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 (which are appended as Exhibit H of this SERVICE AGREEMENT).

22. Service Provider 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 its obligations under this SERVICE AGREEMENT. Service Provider shall carry out, and shall cause its sub-subcontractors to carry out, applicable requirements of 49 CFR Part 26. Failure by Service Provider to carry out these requirements is a material breach of this SERVICE AGREEMENT, which may result in the termination of this SERVICE AGREEMENT and the Contract or such other remedy as Contractor deems appropriate (subject to the Service Provider's rights to notice and opportunity to cure set forth in this SERVICE AGREEMENT). Service Provider shall include the language in this subsection 22 in every sub-subcontract (including purchase orders and in every subcontract for the scope of this SERVICE AGREEMENT), 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. Service Provider confirms for itself and all sub-subcontractors that Service Provider 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 Service Provider and each sub-subcontractor maintains no employee facilities segregated on the basis of race, color, religion, or national origin. Service Provider shall comply with all applicable laws relating to equal employment opportunity and nondiscrimination, including those set forth in Exhibit 3 of the Contract (which is appended as Exhibit G of this SERVICE AGREEMENT), and shall require its sub-subcontractors to comply with such provisions.
23. Service Provider hereby agrees to abide by the applicable portions of the Contractor's Job Training Plan/Small Business Opportunity Plan set forth as Exhibit 8 to the Contract. Service Provider shall include this subsection 23 in every sub-subcontract (including purchase orders and task orders for the scope of this SERVICE AGREEMENT), and shall require that each sub-subcontractor include this section in all sub-subcontracts at lower tiers (including purchase orders and task orders for the scope of this SERVICE AGREEMENT), except for sub-subcontracts with the Owner or Governmental Entities, so that such provisions

will be binding upon each sub-subcontractor.

24. Service Provider shall pay or cause to be paid to all applicable workers employed by it or its sub-subcontractors to perform its obligations under the SERVICE AGREEMENT 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 (which is appended as Exhibit G of this SERVICE AGREEMENT). Service Provider 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 Contractor or Service Provider, 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. Service Provider shall comply and cause its Subcontractors to comply with all Laws regarding notice and posting of intent to pay prevailing wages, of prevailing wage requirements and of prevailing wage rates.
25. Any Project Supplies supplied under this SERVICE AGREEMENT (“**Service Provider’s Warranties**”) shall (a) be under warranty from a period starting with the delivery of Project Supplies and ending, at least, one year after Project Final Acceptance and (b) survive all Owner inspections, tests and approvals. Service Provider’s Warranties shall be extended to Owner and any third parties for whom Project Supplies are supplied under this SERVICE AGREEMENT; provided however that the foregoing requirement shall not apply to standard, pre-specified manufacturer warranties of mass-marketed materials, products (including software products), equipment or supplies where the warranty cannot be extended to Owner using commercially reasonable efforts.
26. Service Provider shall cooperate and provide
 - (i) such information as determined necessary or desirable by Owner in connection with any Project financing;
 - (ii) such information as is necessary or requested by Owner to assist or facilitate the submission by Owner of any documentation, reports or analysis required by the State, FHWA or any other Governmental Entity with jurisdiction over the Project.
27. Service Provider acknowledges that, if the amount of the SERVICE AGREEMENT exceeds \$10,000,000, Service Provider is considered a “Major Subcontractor” under the Contract. In that case:
 - (i) Service Provider shall have submitted to Developer, immediately prior to executing the SERVICE AGREEMENT, a copy of all documentary information used in determining its SERVICE AGREEMENT price, to be held in the same manner as the EPDs and which shall be accessible by Owner, Developer and Dispute resolvers;
 - (ii) Service Provider shall submit to Developer, immediately prior to executing each change

order, a copy of all documentary information used in determining its price for Materials included in any Change Order, to be held in the same manner as the EPDs and which shall be accessible by Owner, Developer and Dispute resolvers;

- (iii) Service Provider represents and warrants, for the benefit of Contractor and Owner, that Seller's submission in the EPDs, constitutes all the documentary information used in establishing its SERVICE AGREEMENT price, and agrees to provide a sworn certification in favor of Contractor and Owner together with each supplemental set of EPDs, stating that the information contained therein is complete, accurate and current.

EXHIBIT E

SUBCONTRACTOR/SERVICE PROVIDER DISPUTES UNDER THE PRIME CONTRACT

SECTION 19. PARTNERING AND DISPUTE RESOLUTION

19.1 GENERAL DISPUTE RESOLUTION PROVISIONS

Partnering will be encouraged in preference to formal dispute resolution mechanisms. Partnering in this context is intended to be a voluntary, non-binding procedure available for use by the Parties to resolve any issues that may arise during performance of the Work.

19.2 PARTNERING

19.2.1 SCHEDULE; PARTICIPATION

As soon as possible after execution of this Agreement, TxDOT and Developer shall jointly select a third-party facilitator to conduct the partnering meetings. The cost of the facilitator shall be shared equally by TxDOT and Developer. Partnering meetings shall be conducted at the office of TxDOT or at such location as otherwise agreed upon by the Parties. Persons who should attend the partnering meetings include Key Personnel and executives of the Parties.

19.2.2 CONFIDENTIALITY

Subject to the requirements of the Public Information Act, any statements made or materials prepared during or relating to partnering meetings, including any statements made or documents prepared by the facilitator, shall not be admissible or discoverable in any judicial or other dispute resolution proceeding, unless such statements or materials are admissible or discoverable under applicable Law.

19.3 DISPUTE RESOLUTION PROCEDURES

19.3.1 DISPUTES GOVERNED BY THESE PROCEDURES

a)The Parties agree, in accordance with 43 TEX. ADMIN. CODE. Section 9.6, to be bound by and subject to the procedures established in this Section 19.3 as an agreement regarding dispute resolution procedures that shall survive expiration or earlier termination of the Term and thereafter for so long as either Party has any obligation originating under the Contract Documents. b) The provisions of this Section 19.3 are intended to accord with Section 191.112 of the Code and the DRP Rules promulgated thereunder. c) As used in this Section 19.3, the phrase “the procedures established in this Section 19.3” includes the procedures established in this Section 19.3, the Disputes Board Agreement, the DRP Rules, the Code, and the Texas Government Code. d) All Disputes arising under the Contract Documents shall be resolved pursuant to the Informal Resolution Procedures and, if not resolved thereby, the Dispute Resolution Procedures, except the following: (i) Any equitable relief sought in Travis County,

Texas District Court that TxDOT is permitted to bring against Developer under Section 19.3.1(g); and (ii) Ineligible Matters. e) Any disagreement between the Parties as to whether the Informal Resolution Procedures or the Dispute Resolution Procedures apply to a particular Dispute shall be treated as a Dispute for resolution in accordance with this Section 19.3. f) With respect to any Dispute for resolution in accordance with the procedures established in this Section 19.3, the Parties agree that: (i) such Dispute must be asserted in writing to the other Party prior to the running of the applicable statute of limitations; and (ii) provided that this is done, the applicable statute of limitations shall be tolled until the 30th day after conclusion of the last such procedure applicable to such Dispute. g) Jurisdiction of Travis County, Texas District Courts TxDOT may invoke the jurisdiction of the district courts of Travis County, Texas to petition for equitable relief against Developer, including temporary restraining orders, injunctions, other interim or final declaratory relief or the appointment of a receiver, to the extent allowed by Law. h) Matters Ineligible for Dispute Resolution Procedures The Dispute Resolution Procedures shall not apply to the following (collectively, “Ineligible Matters”): (i) Any matters that the Contract Documents expressly state are final, binding or not subject to dispute resolution; (ii) Any claim or dispute that does not arise under the Contract Documents; (iii) Any claim that is not actionable against TxDOT by Developer on its own behalf or on behalf of its Subcontractors in accordance with Section 19.4; iv) Any claim for indemnity under Section 18; (v) Any claim for injunctive relief; (vi) Any claim against an insurance company, including any Subcontractor Dispute that is covered by insurance; (vii) Any claim arising solely in tort or that is covered by the Texas Tort Claims Act; (viii) Any claim arising out of or relating to any Utility Adjustment where the Utility Owner is a necessary party (unless, and only to the extent that, the applicable Utility Agreement provides for resolution of claims as set forth in this Section 19); (ix) Any claim or dispute that is the subject of litigation in a lawsuit filed in court to which the procedures established in this Section 19.3 do not apply, including any effort to interplead a Party into such a lawsuit in order to make the procedures established in this Section 19.3 applicable; (x) Any claim for, or dispute based on, remedies expressly created by statute; and (xi) Any Dispute that is actionable only against a Surety.

19.3.2 INFORMAL RESOLUTION AS CONDITION PRECEDENT

As a condition precedent to the right to have any Dispute resolved pursuant to the Dispute Resolution Procedures or by a district court, the claiming Party must first attempt to resolve the Dispute directly with the responding Party through the informal resolution procedures described in Section 19.3.3 other than Section 19.3.3(c) (collectively, the “Informal Resolution Procedures”). Time limitations set forth for the Informal Resolution Procedures may be changed by mutual written agreement of the Parties. Changes to the time limitations for the Informal Resolution Procedures agreed upon by the Parties shall pertain to the particular Dispute only and shall not affect the time limitations for the Informal Resolution Procedures applicable to any subsequently arising Disputes.

19.3.3 INFORMAL RESOLUTION PROCEDURES

a) Notice of Dispute to Designated Agent. A Party desiring to pursue a Dispute against the other Party shall initiate the Informal Resolution Procedures by serving a notice on the responding Party’s designated agent. Unless otherwise indicated by notice from one Party to the

other Party, each Party's designated agent shall be its Authorized Representative. The notice shall contain a concise statement describing: (i) If the Parties have mutually agreed that the Dispute is a Fast-Track Dispute; (ii) The date of the act, inaction or omission giving rise to the Dispute; (iii) An explanation of the Dispute, including a description of its nature, circumstances and cause; (iv) A reference to any pertinent provision(s) from the Contract Documents; (v) If applicable and then known, the estimated dollar amount of the Dispute, and how that estimate was determined (including any cost and revenue element that has been or may be affected); (vi) If applicable, an analysis of the Project Schedule and Completion Deadlines showing any changes or disruptions (including an impacted delay analysis reflecting the disruption in the manner and sequence of performance that has been or will be caused, delivery schedules, staging, and adjusted Completion Deadlines); (vii) If applicable, the claiming Party's plan for mitigating the amount claimed and the delay claimed; (viii) The claiming Party's desired resolution of the Dispute; and (ix) Any other information the claiming Party considers relevant. The notice shall be signed by the designated representative of the Party asserting the Dispute, and shall constitute a certification by the Party asserting the Dispute that: (x) the notice of Dispute is served in good faith; (y) to the then current knowledge of such Party, except as to matters stated in the notice of Dispute as being unknown or subject to discovery, (1) all supporting information is reasonably believed by the Party asserting the Dispute to be accurate and complete and (2) the Dispute accurately reflects the amount of money or other right, remedy or relief to which the Party asserting the Dispute reasonably believes it is entitled; and (z) the designated representative is duly authorized to execute and deliver the notice and such certification on behalf of the claiming Party. (x) If the responding Party agrees with the claiming Party's position and desired resolution of the Dispute, it shall so state in a response. The notice of the Dispute and such response shall suffice to evidence the Parties' resolution of the subject Dispute unless either Party requests further documentation. Upon either Party's request, within five Business Days after the claiming Party's receipt of the responding Party's response in agreement, the Parties' designated representatives shall state the resolution of the Dispute in writing as appropriate, including execution of Change Orders or other documentation as needed, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute. (xi) The Party asserting the Dispute shall not be prejudiced by its initial statement of the Dispute and shall have the ability at any time during the Informal Resolution Procedures and Dispute Resolution Procedures to modify its statement of the Dispute or the amount of money or other right, remedy or relief sought. b) Fast-Track Disputes. With respect to any Dispute that the Parties mutually designate as a Fast-Track Dispute, the Informal Resolution Procedures shall be abbreviated in that the procedure contemplated in Section 19.3.3(c) shall not be required. c) CEO / Executive Director Meetings. Commencing within ten Business Days after the notice of Dispute is served and concluding ten Business Days thereafter, the Chief Executive Officer of Developer and the Executive Director or the assistant Executive Director, shall meet and confer, in good faith, to seek to resolve the Dispute raised in the claiming Party's notice of Dispute. If they succeed in resolving the Dispute, Developer and TxDOT shall memorialize the resolution in writing, including execution of Change Orders or other documentation as appropriate, and thereafter each Party shall then promptly perform its respective obligations in accordance with the agreed resolution of the Dispute. d) Failure to Resolve Dispute With Informal Resolution Procedures. If a Dispute is not timely resolved under the Informal Resolution Procedures, then within 15 days (seven days for Fast-Track Disputes) after the conclusion of the time periods for informal Resolution Procedures,

if such Dispute was not resolved to the Parties' satisfaction: (i) The Parties may mutually agree to initiate mediation or other alternative dispute resolution process in accordance with Section 19.3.7; or (ii) Either Party may refer the Dispute to the Disputes Board for resolution pursuant to Section 19.3.4(b).

19.3.4 DISPUTES BOARD; FINALITY OF DISPUTES BOARD DECISION

a) Disputes Board Agreement. The Parties executed the Disputes Board Agreement on even date herewith. The Disputes Board Agreement governs all aspects of the Disputes Board, as well as all rights and responsibilities of the Parties with respect to the Disputes Board, that are not otherwise addressed in this Section 19.3, the DRP Rules and the Code. If the composition of either Party's Disputes Board Member Candidates' List has not been finalized prior to the Effective Date, that Party shall promptly appoint the members in accordance with the requirements and procedures of the Disputes Board Agreement. The Disputes Board shall conduct proceedings and, upon completion of its proceedings, issue written findings of fact, written conclusions of law, and a written decision to TxDOT and Developer. The Disputes Board shall have the authority to resolve any Dispute other than Ineligible Matters and any actions for equitable relief in district court that TxDOT is permitted to bring against Developer under Section 19.3.1(a). The Disputes Board shall not have the authority to order that one Party compensate the other Party for attorneys' fees and expenses. If a Disputes Board Decision awards an amount payable by one Party to the other, such amount became or shall become due and payable on the date required for payment in accordance with the applicable DRP governed agreement. If the date of payment is not specified in a DRP governed agreement, the payment shall be due ten days after the date the Final Order Implementing Decision for such decision becomes final under Section 19.3.6 (or, if the tenth day is not a Business Day, the next Business Day). Except for those matters subject to Section 19.8, interest at LIBOR on an amount payable by one Party to the other shall accrue beginning on the date such amount was due and continuing until the date such amount is paid. If the notice of Dispute fails to meet the certification requirements under Section 19.3.3(a), on motion of the responding Party the Disputes Board shall suspend proceedings on the Dispute until a correct and complete certification is delivered, and shall have the discretionary authority to dismiss the Dispute for lack of a correct certification if it is not delivered within a reasonable time as set by the Disputes Board. Prior to the entry by the Disputes Board of a final decision on a Dispute, the Disputes Board shall require a defective certification to be corrected. b) Submission of Dispute to Disputes Board. Within 15 days (seven days for Fast-Track Disputes) after the end of the last time period under the Informal Resolution Proceedings, either Party may refer a Dispute to the Disputes Board for resolution by serving notice on the other Party. The notice shall include the same information as a notice of Dispute issued under Section 19.3.3(a). Within 15 days (seven days for Fast-Track Disputes) after a Party refers a Dispute to the Disputes Board, the responding Party shall serve a response upon the claiming Party's designated agent. The response shall include the same information as the notice of Dispute issued under Section 19.3.3(a), to the extent applicable; shall be signed by the designated representative of the responding Party; and shall constitute a certification by the responding Party that: (i) The response to the claiming Party's notice of Dispute is served in good faith; (ii) All supporting information is reasonably believed by the responding Party to be accurate and, except as otherwise reasonably explained in the response, complete; and (iii) The responding Party disputes the amount of money or other right, remedy or relief to which the

claiming Party believes it is entitled. Neither Party may attempt to seek resolution of a Dispute by the Disputes Board or litigate the merits of any Dispute in court if such Dispute is not timely referred to the Disputes Board within the 15-day time period under this Section 19.3.4(b), except for Ineligible Matters and Disputes for which TxDOT is entitled to seek relief in court. The responding Party shall also assert in its response any challenge it may then have to the Dispute Board's authority to resolve the Dispute if the responding Party then believes in good faith that the Dispute is an Ineligible Matter. c) Finality of Disputes Board Decision. Upon completion of the remainder of the procedures required under the Code and the DRP Rules, each Disputes Board Decision shall be final, conclusive, binding upon and enforceable against the Parties.

19.3.5 SOAH ADMINISTRATIVE HEARINGS AND FINAL ORDERS

a) Appeal of Disputes Board Decision. If, within 20 days after the Disputes Board's issuance of the Disputes Board Decision to TxDOT and Developer (the "Appeal Period"), either Party is dissatisfied with the Disputes Board Decision due to a good faith belief that Disputes Board Error occurred, (i) Developer may request the Executive Director to seek or (ii) TxDOT may seek a formal administrative hearing before SOAH pursuant to Texas Government Code, Chapter 2001, and Section 191.112 of the Code, solely on the grounds that Disputes Board Error occurred. Upon receipt of Developer's request for a formal administrative hearing before SOAH, the Executive Director shall, as a purely ministerial act, refer the matter to SOAH within ten Business Days after receipt of Developer's request. If Developer does not request, and TxDOT does not seek for itself, a formal administrative hearing before SOAH under this Section 19.3.5(a) within the Appeal Period, then within ten Business Days after the expiration of the Appeal Period, the Executive Director shall issue the Final Order Implementing Decision as a purely ministerial act. If the Executive Director fails to issue the Final Order Implementing Decision within this ten Business Day time period, the Disputes Board Decision shall become effective as the Final Order Implementing Decision for all purposes on the next Business Day. Neither Party may attempt to: (i) Seek an administrative hearing before SOAH on any Dispute after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH; (ii) Seek rehearing in any forum of a Dispute that is the subject of a Disputes Board Decision after the Appeal Period has expired without either Party seeking an administrative hearing before SOAH; or (iii) Resubmit to the Disputes Board or litigate in court any Dispute that was the subject of and resolved by a prior final Disputes Board Decision. b) Appeal of Disputes Board Error to SOAH. "Disputes Board Error" means one or more of the following: (i) The Disputes Board failed, in any material respect, to properly follow or apply the procedures for handling, hearing and deciding on the Dispute established under this Section 19.3 and such failure prejudiced the rights of a Party; or (ii) The Disputes Board Decision was procured by, or there was evident partiality among the Disputes Board Members due to, a Conflict of Interest, Misconduct, corruption or fraud. c) SOAH Proceeding and ALJ Proposal For Decision. Upon referral to SOAH of the question of whether Disputes Board Error occurred, the ALJ shall conduct a hearing solely on the question of whether Disputes Board Error occurred. The Disputes Board's written findings of fact, conclusions of law and Disputes Board Decision; any written dissenting findings, recommendations or opinions of a minority Disputes Board Member; and all submissions to the Disputes Board by the Parties shall be admissible in the SOAH proceeding, along with all other evidence the ALJ determines to be relevant. After timely closing of the record of the SOAH proceeding, the ALJ shall timely issue to the Executive Director and

Developer the ALJ's written proposal for decision as to whether Disputes Board Error occurred. Each Party may file exceptions to the proposal for decision with the ALJ no later than seven days after issuance of the ALJ's proposal for decision and, in response to a Party's exceptions, the other Party may file a reply to the excepting Party's exceptions with the ALJ no later than 14 days after issuance of the proposal for decision. The ALJ shall review all exceptions and replies and notify TxDOT and Developer no later than 21 days after issuance of the proposal for decision whether the ALJ recommends any changes to the proposal for decision, amends the proposal for decision in response to exceptions and replies to exceptions, or corrects any clerical errors in the proposal for decision. The ALJ shall reissue its written proposal for decision to the Executive Director and TxDOT, together with written findings of fact and conclusions of law, if revised from those previously furnished to the Parties. Unless a Party in good faith challenges the Disputes Board's authority to resolve the Dispute because the Dispute is an Ineligible Matter (1) in the proceedings before the Disputes Board, (2) as a Disputes Board Error during the Appeal Period, (3) in the SOAH proceeding or (4) in exceptions to the ALJ's proposal for decision timely filed under this Section 19.3.5(c) as set forth in the preceding paragraph, any objection to the Disputes Board's authority to resolve the applicable Dispute shall be deemed waived by such Party. d) Final Orders of Executive Director. Within 28 days after receipt of the ALJ's proposal for decision: (i) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that Disputes Board Error occurred, the Executive Director shall issue a Final Order Vacating Decision. A "Final Order Vacating Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the explanatory statement required under Section 201.112(c) of the Code); ruling that the Disputes Board Decision is invalid, void and of no force and effect; and remanding the Dispute to the Disputes Board for reconsideration. If the nature of the Disputes Board Error was a Conflict of Interest, Misconduct fraud or corruption of a Disputes Board Member, the remanded Dispute will be reconsidered by a reconstituted Disputes Board after removal of such Disputes Board Member; or (ii) If, upon review of the ALJ's proposal for decision, the Executive Director concludes that no Disputes Board Error occurred, the Executive Director shall issue a Final Order Implementing Decision. A "Final Order Implementing Decision" means an order of the Executive Director either adopting or rejecting the ALJ's proposal for decision, as applicable (and if the Executive Director rejects the ALJ's proposal for decision, accompanied by the explanatory statement required under Section 201.112(c) of the Code), and approving and fully implementing the Disputes Board Decision. The Parties agree and acknowledge that the Executive Director's issuance of either type of Final Order is a purely ministerial function of the Executive Director. If the Executive Director fails to issue one or the other type of Final Order within the foregoing 28 Day time period, then on the next Business Day: (x) If the ALJ determined that Disputes Board Error occurred, a Final Order Vacating Decision shall be deemed to have been issued for all purposes by the Executive Director which (1) adopted the ALJ's proposal for decision; (2) ruled that the Disputes Board Decision is invalid, void and of no force and effect; and (3) remanded the Dispute to the Disputes Board for reconsideration (or, if the nature of the Disputes Board Error was a Conflict of Interest or Misconduct of a Disputes Board Member, a reconstituted Disputes Board after removal of such Disputes Board Member) without Disputes Board Error; or (y) If the ALJ determined that no Disputes Board Error occurred, a Final Order Implementing Decision shall be deemed to have been issued for all purposes by the Executive Director which adopted the ALJ's proposal for decision and fully implemented the Disputes Board Decision.

19.3.6 JUDICIAL APPEAL OF FINAL ORDERS

Under Substantial Evidence Rule Each issued or deemed issued Final Order Implementing Decision and Final Order Vacating Decision shall be considered a final order for purposes of Developer's ability to seek judicial appeal thereof under Section 201.112(d) of the Code under the substantial evidence rule. TxDOT and Developer hereby agree that: (a) pursuant to Section 2001.144(a)(4) of the Texas Government Code, each Final Order Implementing Decision and Final Order Vacating Decision shall be final (and therefore eligible for appeal under Section 201.112(d) of the Code) on the date such final order is issued or deemed issued by the Executed Director; and (b) pursuant to Section 2001.145 of the Texas Government Code, TxDOT and Developer hereby agree that the filing of a motion for rehearing shall not be a prerequisite for appeal of such final orders under Section 201.112(d) of the Code.

19.3.7 MEDIATION

Developer and TxDOT, by mutual agreement, may refer a Dispute (as well as any dispute with a Utility Owner relating to any Utility Adjustment) to mediation for resolution. The Parties shall use diligent efforts to convene and conclude mediation proceedings within 30 days after they agree to refer the Dispute to mediation. Developer and TxDOT shall share equally the expenses of the mediation. If any Dispute has been referred to mediation for resolution by mutual agreement of the Parties, but the Dispute is not resolved within the foregoing 30-day period, then either Party can, on or after the 31st day, cease participating in such mediation. A Party shall give notice to the other Party that it will no longer participate. The deadlines in this Section 19.3 for processing a Dispute are tolled, day for day, during mediation.

19.3.8 CONFIDENTIAL INFORMATION

a) Subject to the requirements of the Public Information Act, all discussions, negotiations, and Informal Resolution Procedures between the Parties to resolve a Dispute, and all documents and other written materials furnished to a Party or exchanged between the Parties during any such discussions, negotiations, or Informal Resolution Procedures, shall be considered confidential and not subject to disclosure by either Party. b) With respect to all discussions, negotiations, testimony and evidence between the Parties or in a proceeding before the Disputes Board, an administrative hearing before an ALJ or a judicial proceeding in court: (i) All information that has been deposited into escrow pursuant to Section 5.13.4 of the ITP shall be treated as confidential by the Parties and the Disputes Board, the ALJ and the court, as applicable, and, further, shall be subject to a protective order issued by the Disputes Board, the ALJ or the court, as applicable, to protect such information from disclosure to third Persons. (ii) Either or both Parties may also request a protective order in any Disputes Board proceeding, SOAH administrative hearing or judicial proceeding to prohibit disclosure to third Persons of any other information that such Party or Parties believe(s) is confidential. Whether such a protective order will be issued by the Disputes Board, the ALJ or the court, as applicable, shall be determined under the standards set forth in the Texas Rules of Evidence, the Texas Rules of Civil Procedure, Section 223.204 of the Code and the Public Information Act.

19.4 DISPUTE RESOLUTION: ADDITIONAL REQUIREMENTS FOR SUBCONTRACTOR DISPUTES

For purposes of this Section 19, a “Subcontractor Dispute” shall include any Dispute by a Subcontractor, including also any pass-through claims by a lower tier Subcontractor, against Developer that is actionable by Developer against TxDOT and arises from Work, materials or other services provided or to be provided under the Contract Documents. If Developer determines to pursue a Dispute against TxDOT that includes a Subcontractor Dispute, the following additional conditions shall apply: (a) Developer shall identify clearly in all submissions pursuant to this Section 19, that portion of the Dispute that involves a Subcontractor Dispute. (b) Failure of Developer to assert a Subcontractor Dispute on behalf of any Subcontractor at the time of submission of a related demand by Developer, as provided hereunder, shall constitute a release and discharge of TxDOT by Developer on account of, and with respect to, such Subcontractor Dispute. (c) Developer shall require in all Subcontracts that all Subcontractors of any tier: (i) agree to submit Subcontractor Disputes to Developer in a proper form and in sufficient time to allow processing by Developer in accordance with this Section 19; (ii) agree to be bound by the terms of this Section 19 to the extent applicable to Subcontractor Disputes; (iii) agree that, to the extent a Subcontractor Dispute is involved, completion of all steps required under this Section 19 shall be a condition precedent to pursuit by the Subcontractor of any other remedies permitted by Law, including institution of a lawsuit against Developer; (iv) agree that any Subcontractor Dispute brought against a Surety, that also is actionable against TxDOT through Developer, shall be stayed until completion of all steps required under this clause (c); and (v) agree 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 TxDOT. Subcontractors shall, at all times, have rights and remedies only against Developer.

19.5 SUBSEQUENT PROCEEDINGS

19.5.1 EXCLUSIVE JURISDICTION AND VENUE

The Parties agree that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity that is permitted to be brought by a Party in court arising out of the Contract Documents shall be the district courts of Travis County, Texas.

19.5.2 ADMISSIBILITY OF DISPUTES RESOLUTION PROCEEDINGS

The admissibility, in any administrative or judicial proceeding subsequent to this dispute resolution process, of the Parties’ submittals and any TxDOT determinations shall be in the discretion of the appropriate administrative officer or the court in accordance with applicable Law.

19.6 CONTINUATION OF DISPUTED WORK

At all times during the dispute resolution procedures set forth in this Agreement, Developer and all Subcontractors shall continue with the performance of the Work and their

obligations, including any disputed Work or obligations, diligently and without delay, in accordance with this Agreement, except to the extent enjoined by order of a court or otherwise approved by TxDOT in its discretion. Developer 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 Work even if Developer's position in connection with the Dispute ultimately prevails. In addition, during the pendency of resolution of a Dispute relating to the Work, the Parties shall continue to comply with all provisions of the Contract Documents, the Project Management Plan, the Governmental Approvals and applicable Law.

19.7 RECORDS RELATED TO CLAIMS AND DISPUTES

Throughout the course of any Work that is the subject of any Dispute that is the subject of dispute resolution procedures of this Agreement, Developer shall keep separate and complete records of any extra costs, expenses, or other monetary effects relating to the disputed Work, and shall permit TxDOT access to these and any other records needed for evaluating the Dispute. These records shall be retained for a period of not less than one year after the date of resolution of the Dispute pertaining to such disputed Work (or for any longer period required under any other applicable provision of the Contract Documents).

19.8 INTEREST

This Section 19.8 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251. In the event a Developer elects to pursue a formal Dispute with TxDOT under this Section 19, TxDOT shall notify Developer whether it will dispute the claim not later than the 21st day after the date TxDOT receives the claim. A payment becomes overdue and begins to accrue interest to the extent set forth in the Texas Prompt Payment Act, Government Code, Chapter 2251.

19.9 ATTORNEY FEES

This Section 19.9 applies only to claims that are subject to the Texas Prompt Payment Act, Government Code, Chapter 2251. A party shall pay the attorneys' fees of the other party for Disputes brought pursuant to this Section 19 only if such payment is required pursuant to the Texas Prompt Payment Act and the payment of attorney's fees is ordered in a TxDOT administrative order or in a judicial order.

EXHIBIT F**JOBSITE RULES, SAFETY REQUIREMENTS AND SUBCONTRACTOR/SERVICE PROVIDER SAFETY QUESTIONNAIRE FORM**

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/SERVICE AGREEMENT SAFETY QUESTIONNAIRE FORM

Flatiron/Dragados, LLC - US 181 Harbor Bridge				
Subcontractor Pre-Qualification Safety Questionnaire Form				
To Be Completed By The Sub-Contractor				
Company Name / Address / Phone & Fax:		Project:	US 181 Harbor Bridge	
		Scope of Work:		
		Yes	No	Remarks
1	Health and Safety Policy			
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: _____			
d.	Average number of workers anticipated to be onsite?			
e.	Does your organization have a substance abuse policy?			
If No, Explain Why?				
2	Health and Safety Organization			
a.	Name and qualifications of the designated Safety Person(s) or Competent Person(s) on site?		Details Must Be Submitted	
	Name: _____ Qualifications: _____			
b.	Have all employees received adequate training in health and safety? Please provide details of training in relation to the work to be done			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? Please attach recent examples. 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.
Flatiron/Dragados, LLC - Internal Use Only		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/Service Agreement Questionnaire Preparation Form			
This Form Is Designed To Assist Your Organization In Getting Together All Of The Required Information For The Pre-Qualification Form			
Company Name / Address / Phone & Fax:		Project: US 181 Harbor Bridge	
		Scope of Work:	
		Yes	No
Health and Safety			
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**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 journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b) Trainees (programs of the USDOL).

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

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

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

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

- c) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- d) Apprentices and Trainees (programs of the U.S. DOT).

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

- 5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- 6. Subcontracts.** The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- 7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- 8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- 9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

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

- b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The FHWA or the 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.

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	\$16.96	
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	

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.

**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		

**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.

**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.

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TABLE 1

County	Goals for Minority Participation	County	Goals for Minority Participation
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

County	Goals for Minority Participation	County	Goals for Minority Participation
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.

Construction Cost Estimate		
From	To	Trainees
\$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 “H”**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 "I"

PARTIAL LIEN WAIVERS AND AFFIDAVITS FORMAT

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 _____

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) _____ (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 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.

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DATE: _____

_____(Company Name)

BY : _____(Signature)

_____(Title)

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

Notary Public in and for the State of Texas
My commission expires_____

EXHIBIT J
CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (hereinafter “**Agreement**”) made as of the day of **Month 2018**, by and between Flatiron/Dragados, LLC (“**Contractor**”) a corporation incorporated under the laws of Delaware, and having a place of business at 500 N. Shoreline Blvd., Suite 500, Corpus Christi, TX 78401; and **(Company Name), (Address)**, (the “**Recipient**”). (Recipient and Contractor shall be individually referred to hereinafter as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, Contractor or its parent, subsidiary or affiliated companies have in their possession certain financial and technical information, know-how and data of a confidential and proprietary nature relating to the engineering, procurement and construction of the US 181 Harbor Bridge Replacement Project in Corpus Christi, TX (hereinafter referred to as the “**Project**”) being developed by Texas Department of Transportation (TxDOT) (the “**Owner**”);

WHEREAS, Contractor is prepared to make certain Confidential Information available to Recipient for the purpose of provide services under a certain Service Agreement Number 20-702-SA-XXX, on the condition that Recipient agrees to maintain the confidential and proprietary nature thereof.

NOW, THEREFORE, in consideration of the premises and mutual covenants set for herein, the Parties hereto understand and agree as follows:

1. "Confidential Information" as used herein is defined as that proprietary or confidential information which is disclosed by the Owner, Contractor, or its parent, subsidiary or affiliated companies or any of their respective employees or agents to Recipient, its employees and agents, whether acquired directly from Owner, Contractor, or its parent, subsidiary or affiliated companies or any of their respective employees or agents, or by visiting Contractor's offices or facilities. Confidential Information includes, but is not limited to, written or oral disclosure of the following types of data: all data such as accounting, business projections, engineering, procurement, construction and other information related to the Project (whether developed by Contractor, the Owner, or a third party) including, but not limited to, any specifications, drawings, designs, contracting methods, costs, technologies, Service Agreement No. 20-702-SA-XXX and other information disclosed hereunder.
2. Recipient agrees: (a) to hold said Confidential Information and all the information contained therein or derived therefrom in trust and confidence, (b) not to disclose same to others except to Recipient's employees and representatives who must have access to it in order to effectuate the purposes of this Agreement and have a duty not to disclose the Confidential Information, and (c) not to use same for any purpose

other than in connection with the Project. These restrictions shall not apply with respect to:

- a. information which at the time of disclosure is in the public domain;
 - b. information which after disclosure enters the public domain by publication or otherwise through no fault of Recipient; and
 - c. information received by Recipient after the time of disclosure hereunder from a third party that is not under any obligation of confidentiality to Contractor.
3. Recipient agrees to promptly notify Contractor of any inquiry or demand made by any third parties, governmental agency or authority or any inquiry or demand made as a result of any arbitral, administrative, or judicial proceeding wherein an answer to the same would divulge or tend to divulge any Confidential Information. Recipient shall not disclose any such Confidential Information in response to any such inquiry or demand unless required to do so by compulsory process of a court, administrative agency or other governmental body, or an arbitral body. Prior to any such disclosure, Recipient shall notify Contractor of the request for such Confidential Information and shall cooperate with Contractor in any efforts Contractor may undertake to prevent, delay, or limit such disclosure pursuant to the rules or regulations of the authorized body requiring such disclosure.
 4. Recipient agrees to obtain, if not already obtained, written agreements with its employees and agents and contractors who have access to the Confidential Information to maintain the confidential nature of the Confidential Information and all information contained therein or derived therefrom in accordance with the terms hereof.
 5. No right or license is granted by the Owner or Contractor to Recipient in relation to such Confidential Information or the information contained therein or derived therefrom.
 6. Recipient acknowledges and agrees that (i) the Confidential Information disclosed under this Agreement derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) there exists no adequate remedy at law in damages for the unauthorized use or disclosure of Confidential Information. Accordingly, Recipient agrees that in the event of a breach or threatened breach of this Agreement, the Owner and/or Contractor shall be entitled to equitable relief in order to restrain any continued or threatened breach. The foregoing does not constitute a waiver or prohibition against any other remedies at law or in equity available to Owner and/or Contractor in the event of a breach of this Agreement.
 7. No amendments, changes or modifications to this Agreement shall be valid unless same are in writing and signed by a duly authorized representative of each of the Parties hereto.
 8. The Parties shall not assign any right, interest, benefit or obligation of this Agreement without the express written consent of the other Party.
 9. Upon termination of this Agreement, Recipient will return to Contractor all Confidential Information received from Contractor hereunder, and all copies thereof.

10. The obligations under this Agreement shall terminate five years from the date of this Agreement.
11. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Texas, excluding any provisions or principles thereof which would require the application of the laws of a different jurisdiction.
12. This Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior written or oral understandings. This Agreement may be executed in separate counterparts.

IN WITNESS WHEREOF, Recipient and Contractor have each caused this Agreement to be executed in duplicate by their duly authorized representatives to be effective as of the day and year first set forth herein above.

FLATIRON/DRAGADOS, LLC.
(Contractor)

By: _____

Name (print): Hunter Bodycott

Title (print): Deputy Project Manager

Date: _____

FLATIRON/DRAGADOS, LLC
(Contractor)

By: _____

Name (print): Jorge Laris

Title (print): EVP - Dragados USA

Date: _____

SERVICE PROVIDER'S COMPANY NAME
(Service Provider)

By: _____

Name (print): _____

Title (print): _____

Date: _____