



To: Subcontractors and Vendors

In an effort to increase efficiency, save paper, and speed up the subcontracting and material procurement processes, The Great Lakes Construction Co. ("Great Lakes") is implementing a system effective immediately, involving Master Subcontract Terms and Conditions and site-specific Subcontract Purchase Orders.

Great Lakes will be changing its subcontract and procurement processes with a select group of subcontractors and vendors that, traditionally, have performed on-site work (or made site deliveries) on a repeat basis for Great Lakes.

Great Lakes has attached its Master Subcontract/Service Agreement (MSA) with Terms and Conditions dated November 21, 2023, for your review and acceptance. Once you sign and return the attached MSA, they will apply to all future Subcontract Purchase Orders and Material Orders until modified through an amendment signed by Great Lakes.

The Required Contract Provisions for Federal-Aid Construction Contracts is also attached and must be signed by an authorized representative of your organization. Please retain a complete copy of these signed documents for your records.

If you agree and accept the attached Great Lakes' MSA, and the Required Contract Provisions for Federal-Aid Construction Contracts, please initial each page and return the fully signed documents to Great Lakes via email to Kelly Bilczo at (kbilczo@greatlakesway.com) within the next seven (7) days. By signing or initialing these documents, you acknowledge, accept and agree to be bound by the provisions for any site-specific Subcontract/Service/Material Purchase Order you receive from Great Lakes after the date of execution. Additionally, once signed, all bids and quotations that you submit for work after that date shall be subject to the MSA, without exception, unless otherwise expressly acknowledged in writing by Great Lakes on the face of a site-specific Purchase Order or bid solicitation.

Thank you for your anticipated cooperation as we implement these important changes to our contracting processes. We are hopeful that you will join the 175+ vendors that are already signed up and respond promptly and opt to participate in our new program.

Sincerely,

The Great Lakes Construction Co.

**Acknowledged and Agreed:**

Subcontractor/Vendor Name: \_\_\_\_\_

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

City/State/Zip: \_\_\_\_\_

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

Printed Name & Title: \_\_\_\_\_

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

Please initial each page  
and sign  
on pages 1, 10 and 24.

**THE GREAT LAKES CONSTRUCTION CO.'s  
MASTER SUBCONTRACT  
TERMS AND CONDITIONS  
Rev. 11-21-23**

<b>Agreement No.</b>	<b>TO BE CONFIRMED BY SITE-SPECIFIC SUBCONTRACT</b>	<b>Job No.:</b>	<b>TO BE CONFIRMED BY SITE-SPECIFIC SUBCONTRACT PURCHASE ORDER</b>
<hr/> <b>PURCHASE ORDER</b> <hr/>		<hr/>	
<b>Project Name:</b>	<b>TO BE CONFIRMED BY SUBCONTRACT SITE-SPECIFIC</b>	<b>Address:</b>	<b>TO BE CONFIRMED BY SITE-SPECIFIC SUBCONTRACT PURCHASE ORDER</b>
<hr/> <b>SUBCONTRACT PURCHASE ORDER</b> <hr/> (the "Project")		<hr/>	

The Effective Date of these Master Terms and Conditions shall be \_\_\_\_\_, 20\_\_\_. Contractor, The Great Lakes Construction Co. ("Contractor" or "Great Lakes"), and Subcontractor (identified in the signature line below for itself and its affiliated companies, successors and permitted assigns) agree to be bound by the following terms and conditions, which are intended to and shall supplement and amend and apply to each of Contractor's site-specific project Subcontract Purchase Order(s) ("Purchase Order" or "purchase order") issued by Contractor to Subcontractor after the Effective Date of these Master Terms and Conditions (collectively, the "Agreement"). Any provisions in any Subcontractor invoices, proposals, quotations, billing statements, acknowledgment forms or similar documents which are inconsistent with the provisions of this these Master Terms and Conditions, or the Contractor's Purchase Order, shall be of no force or effect, regardless of whether such provisions would materially alter these Master Terms and Conditions. There shall be no modification, amendment or changes to these Master Terms and Conditions unless expressly authorized and approved in writing by Contractor.

The term "Subcontractor" is used in these Master Terms and Conditions, and any site-specific Subcontract Purchase Order to which these Master Terms and Conditions apply, to include the person or entity actually performing work or services on site or off site for Contractor or supplying or furnishing or selling materials and equipment to Contractor in furtherance of that site-specific Subcontract Purchase Order.

**1. ORDER AND ACCEPTANCE:** If Subcontractor fails to object in writing and deliver such objection to Contractor within five (5) business days of Contractor's delivery of the site-specific Purchase Order to Subcontractor, then Subcontractor shall be deemed to have conclusively and unconditionally accepted such site-specific Subcontract Purchase Order. Following expiration of such five (5) day period, Subcontractor's acceptance shall be deemed to have occurred even if Subcontractor has not signed or returned the executed Purchase Order to Contractor. Additionally, Subcontractor's commencement of shipment, promise of shipment, or the furnishing of merchandise, materials, equipment, tools, services or work that is the subject matter of this Agreement (the "Merchandise," "Services" or "Work") shall constitute Subcontractor's agreement that it will deliver the Merchandise, Services or Work in accordance with the terms and conditions of this Agreement. Subcontractor agrees to follow the shipping and invoicing instructions issued by Contractor, which instructions are incorporated by reference into this Agreement. Shipment by Subcontractor of any part of the Merchandise or materials which are the subject of this Agreement, or performance of any of the Services or Work set forth in this Agreement, shall constitute an acceptance of this Agreement for all of the Merchandise, Services or Work ordered herein and acceptance of these terms, conditions, and instructions. The absence of a formal signature by Subcontractor in a site-specific purchase order shall not relieve Subcontractor to comply with all of the terms of this Agreement. Any request or demand for, or statement purporting to make Subcontractor's acceptance conditional on Contractor's assent to, additional or different terms shall be of no effect unless Contractor accepts the changes in writing and initials those changes. Contractor may revoke or modify this Agreement at any time prior to acceptance by Subcontractor. Contractor, in its sole discretion, reserves the right to correct any stenographic, arithmetic and clerical errors.

**2. INCORPORATION BY REFERENCE:** The general, special and supplemental conditions, drawings, plans, specifications, delivery and construction schedules, and safety rider, referred to herein or referred to or attached to these terms and conditions and Contractor's site-specific Subcontract Purchase Order, are specifically incorporated by reference and are made a part of this Agreement. Subcontractor agrees to supply all Merchandise and materials, and to perform all portions of the Services or Work, subject to and in strict accordance with the terms and conditions set forth in this Agreement and all such general, special and supplemental conditions, drawings, plans, specifications, and delivery and construction schedules referenced or incorporated by reference in this Agreement. It is further understood and agreed that all documents between Contractor and Contractor's customer (and the Project Owner where Contractor is not in direct contract with the project owner) also are incorporated into this Agreement by reference and are made a part of this Agreement. Subcontractor represents and agrees that it has carefully examined and understands this Agreement and all of the referenced and incorporated documents. Subcontractor acknowledges and agrees that all referenced and incorporated documents (other than provisions relating to the contract price or fee payable to Contractor) have been made available to Subcontractor and will remain available to Subcontractor at reasonable times at the branch office of Contractor that is managing the Project. This Agreement, and the provisions of the referenced and incorporated documents, are intended to supplement and complement each other and shall, where possible, be so interpreted. If, however, any provision of this Agreement conflicts with a provision of the referenced documents, or if there is a conflict within this Agreement or within any of the referenced documents, the provision imposing the higher quality, greater quantity or greater duty or obligation on Subcontractor shall govern. Subcontractor shall be bound by all interpretations of the Contract Documents made by Contractor's customer, or project owner or the project architect or engineer, to the same extent that such findings and determinations are binding on Contractor. Subcontractor further agrees to be bound by, and to assume toward Contractor, all the terms, obligations, responsibilities and conditions of the referenced and incorporated documents to the same extent that Contractor, in turn, is bound by such referenced documents to the Contractor's customer or the project owner. The referenced and incorporated documents shall collectively be referred to as the "Subcontract Documents" or "subcontract documents" or "Contract Documents."

**3. PRICES:** Unless otherwise specified, all prices include the cost of delivery and unloading at Contractor's facility and/or jobsite as specified in the site-specific Subcontract Purchase Order, and prices include the amounts of any and all applicable sales, use, transfer, excise or other taxes, franchise taxes, CAT taxes, transportation fees, insurance, tariffs or custom duties.

**4. TERMS OF PAYMENT:** Terms of payment, unless otherwise expressly agreed in writing, are as set forth on the face of Contractor's purchase order. Progress or final payments shall be due within ten (10) days of Contractor's actual receipt of payment from Contractor's customer providing all other material terms of the Agreement have been satisfied. Risk of loss with respect to nonconforming merchandise or services shall not pass to Contractor unless and until nonconformities are cured to the satisfaction of Contractor or Contractor accepts the merchandise or services in writing despite the nonconformities. All payments shall be made in United States currency. Payment shall not be to the prejudice of any claims or rights that Contractor might have against Subcontractor on account of omissions or shortages in shipment or known or unknown defects or deficiencies in the Work, Merchandise or Services. Subcontractor shall submit, as a condition precedent to any payment, details of cost, waivers of lien, and sworn affidavits of subcontractor, prevailing

wage or payroll reports, EEO reports, consent of surety to payment, and any other documentation (in form and substance satisfactory to Contractor and Contractor's customer and/or the project owner) as Contractor may request from time to time. Subcontractor understands and agrees that Contractor's receipt of payment from Contractor's customer on account of Subcontractor's Work, Merchandise and/or Services is an express and absolute condition precedent to Contractor's obligation to pay Subcontractor. Subcontractor hereby assumes the risk of default or nonpayment by Contractor's customer or the project owner for any reason whatsoever, including the risk(s) associated with creditworthiness of Contractor's customer or the project owner and the alleged breach by Contractor. Subcontractor shall not be entitled to recover interest on late or past due payments. To the extent a partial payment is based upon estimated quantities, the amount due to Subcontractor shall be determined based upon the estimates approved by the Contractor's customer but only to the extent actually paid to Contractor. Such partial payments based upon estimates are approximate only and all partial estimates and payments shall be subject to correction by Contractor in the final estimate and payment. In addition to the requirements set forth in this Agreement, final payment shall not become due to Subcontractor until the Subcontractor submits to the Contractor (1) an affidavit satisfactory to Contractor and Contractor's customer that payrolls, bills for materials and equipment, and other indebtedness of Subcontractor relating to the Project for which the Contractor or its customer might be liable have been paid or otherwise satisfied; (2) a certificate indicating that the insurance required by the Contract Documents is in force and will remain in force per Paragraph 11 of the Agreement following completion of the Subcontractor's performance; (3) releases and waivers of liens and claims of the Subcontractor and each subcontractor, materialmen, and vendor of Subcontractor (and their respective-lower tiers); and (4) consent of Subcontractor's surety to release of final payment. Unless otherwise provided in the Agreement, Contractor shall have the right to withhold a 10% retainage from any payments (whether progress payments or the final payment) due to Subcontractor. The retainage shall be paid to Subcontractor within 10 days after the last to occur of the following: (a) final delivery, completion and performance of all Merchandise, Services or Work and obligations under this Agreement by Subcontractor; (b) delivery to Contractor of such sworn statements, affidavits, certificates and releases of lien as Contractor may require to evidence the full and final release of mechanic's liens and claims by Subcontractor and by all laborers, subcontractors and materialmen of Subcontractor and all lower-tiers; (c) delivery to Contractor of all manuals, drawings, warranties, guaranties and other documents required by this Agreement or the subcontract documents; and (d) Contractor's actual receipt of retainage from Contractor's customer covering Subcontractor's Merchandise, Services or Work. Notwithstanding the foregoing, the Contractor shall have the right to withhold retainage to cover any guarantee or warranty period required by the agreement between Contractor and its Contractor's customer unless a maintenance bond is provided by Subcontractor.

5. **SCOPE:** The Merchandise, Services or Work of Subcontractor includes, but is not limited to, such of the following as may be necessary to perform and complete the Work: all plant, materials, tools, equipment (whether for temporary or permanent use), scaffolding, supplies, transportation, cartage, loading, hoisting, forms, patterns, models, shop drawings, measurements and other facilities; all labor, work, supervision, cutting, patching, cleaning, temporary construction and other services; and all insurance, taxes, benefits, royalties, temporary utilities and other related costs except as otherwise provided in this Agreement. Subcontractor shall be responsible for all Work under the Subcontract Documents or reasonably inferable therefrom in order to provide a complete project.

6. **SCHEDULE, TIME AND COORDINATION / MEETINGS:** Subcontractor shall diligently and continuously prosecute and complete its Services and Work with the other work being performed on the project and premises, and shall furnish its Merchandise, in accordance with the time and scheduling requirements set forth in this Agreement and the other subcontract documents, or any revisions or modifications thereto. TIME IS OF THE ESSENCE. Subcontractor covenants and agrees to conform with and perform its obligations under this Agreement according to all of Contractor's published schedules and as directed by Contractor in Contractor's reasonable discretion. In order to facilitate Contractor's project planning and scheduling, and upon Contractor's request, Subcontractor promptly shall coordinate and cooperate with Contractor to provide information Contractor deems necessary to permit Contractor to develop and supplement and amend its schedule. If the progress of the project on the premises or any component thereof is delayed, obstructed, hindered or interfered with by any fault, neglect, or failure to act of Subcontractor or any of its officers, agents, employees, subcontractors, or suppliers so as to cause any additional cost, expense, liability or damage to Contractor or Contractor's customer, then Subcontractor agrees to reimburse Contractor and the Contractor's customer for, and indemnify them against, all such costs, expenses, liabilities or damages. Without limiting the generality of the foregoing, if liquidated damages are assessed against the Contractor as a result of Subcontractor's failure to timely deliver its Merchandise or coordinate and perform its Services or Work in accordance with the schedule set forth in the subcontract documents, then Contractor shall have the right to recover the amount of such damages from Subcontractor either by deducting such amount from any monies due or which may become due to the Subcontractor or by any other means available to Contractor. Subcontractor shall continuously monitor the project so as to be fully familiar with the timing, phasing and sequence of operations of the Work or Services and of other work on the project. Subcontractor shall coordinate the delivery of its Merchandise and the performance of its Services or Work with any other work in such manner as Contractor may direct to avoid conflict or interference of such work with others, shall participate in the preparation of coordination drawings and shall conform its Merchandise, Services or Work to the work and operations of Contractor and Contractor's customer and others and the subcontract documents to prevent or mitigate delays and avoid discrepancies (including unnecessary cutting or patching) with contiguous work.

Subcontractor, in person or by a duly authorized representative having power to act and acceptable to Contractor, shall attend, at its own expense, all meetings or conferences that Great Lakes may call, at the project or elsewhere, for the purpose of discussing progress of the Work, Services or Merchandise, project safety, the project schedule, or other matters bearing on the performance of Subcontractor's Work, Services or Merchandise. When possible, Subcontractor will be given at least forty-eight (48) hours' notice of such meetings.

7. **SITE CONDITIONS:** Subcontractor represents that it has made such investigation and inspection of the nature, location and the conditions of the project and premises (*including the character of the surface and subsurface conditions or obstacles to be encountered on, under and around the project or premises, access thereto, and storage and work areas available to Subcontractor thereon*) as are necessary to determine the difficulty and cost to Subcontractor of properly furnishing the Merchandise or Services and performing and completing the Work. Subcontractor represents that it has had full opportunity to view, sample, inspect or test the conditions on the premises prior to the execution of this Agreement, and Subcontractor is not relying upon any opinions or representations of Contractor, the Contractor's customer, or any of their respective officers, agents or employees. If conditions are encountered at the premises which are subsurface or otherwise concealed physical conditions which were actually or allegedly unknown to Subcontractor and which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities, then Subcontractor shall give Contractor written notice promptly and in all instances before conditions are disturbed and in no event later than twenty-four (24) hours after first observance of the conditions or such other period as Contractor may be obligated to notify Contractor's customer under the subcontract documents. Subcontractor shall not be entitled to any additional compensation or damages by reason of any differing or changed or unforeseen or undisclosed conditions unless and to the extent that Contractor's customer actually is liable for and actually pays the same to Contractor, nor shall Subcontractor be entitled to an extension of the time for performance of the Work and furnishing of the Merchandise or Services unless and only to the extent that Contractor's customer actually grants such extension of time to Contractor. Contractor, upon receipt of any payment from Contractor's customer to Contractor based upon any such claim made on behalf of Subcontractor, will pay the same to Subcontractor, less Contractor's expenses in pursuing payment from Contractor's customer. Except to the extent expressly provided in this Agreement, Subcontractor waives the right to make any claims against Contractor or to recover any damages from Contractor based upon conditions encountered.

8. **PERMITS, LICENSES, AND COMPLIANCE WITH LAWS:** Subcontractor shall secure, pay for and keep in effect all licenses, permits and inspection certificates necessary for the proper execution and completion of the Work and shall deliver all certificates of inspection and other certificates and permits to Contractor. Subcontractor shall comply with all laws, ordinances, rules and regulations of governmental entities having jurisdiction, including but not limited to those relating to wage and hour compliance, safety, health, discrimination in employment, fair employment practices or equal employment opportunity, and with building codes and the other requirements of the governing authorities applicable to this Agreement. In accepting this

Agreement, Subcontractor shall be deemed to represent that the Work, Merchandise or Services was or will be produced or performed or furnished in strict compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. Unless otherwise agreed in writing, Subcontractor shall insert a certificate on all invoices submitted in connection with this Agreement stating that the Merchandise or Work or Service covered by the invoice was produced in compliance with applicable requirements of the Fair Labor Standards Act, as amended, and all regulations and orders of the U.S. Department of Labor. Subcontractor further represents that the Merchandise or Services to be furnished and/or Work performed hereunder was or will be produced or performed in compliance with Executive Order 11246 and regulations issued thereunder, and any other standards, rules and regulations that apply to the project of Contractor's customer, including the project owner, and further including those that are incorporated by reference into this Agreement. Subcontractor shall develop and maintain a certified or approved drug free workplace program, including compliance with Executive Order 2002-13T, and fully comply with the requirements of Executive Order 2002-13T and all related regulations. Prior to commencement of the Work or Services set forth in this Agreement, Subcontractor shall provide Contractor with written verification of the implementation of an approved drug free workplace program, and compliance with Executive Order 2002-13T.

In addition to the foregoing and the other terms and requirements of this Agreement, it is understood and agreed that the attached **Subcontract Addendum** is incorporated by reference and shall apply to any Subcontract site-specific Purchase Order or project involving expenditures of federal funds, including without limitation federal aid highway contracts.

**9. TAXES AND FEES AND COSTS:** Subcontractor shall file all tax returns and reports with, and pay when due all taxes and contributions owing to each governmental entity or subdivision applicable to the Merchandise, Services or Work or to the wages of its employees in connection with this Agreement, including, but not limited to, all contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county and/or municipal tax withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees engaged in the Work or services or the furnishing of Merchandise; all sales, use, personal property and other taxes (including interest and penalties thereon) required by any federal, state, county, municipal or other law to be paid or collected by Subcontractor or any other person or persons acting for, through or under Subcontractor by reason of the performance of the Work or the furnishing of the Merchandise or Services; and all pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons engaged in the Work.

**10. WORKER'S COMPENSATION:** Subcontractor, at its expense, shall fully comply and cause its lower tiers to comply with the worker's compensation laws for each state in which the Work or Services is performed, and with the safety and other regulations of all governmental authorities. Before commencing the Work or Services or furnishing the Merchandise, Subcontractor shall deliver to Contractor certificates evidencing full compliance all governmental requirements. Further, Subcontractor, at its expense, shall procure and maintain in full force and effect for the duration of the Work, to the extent available, Worker's Compensation insurance providing coverage for statutory benefits and Employer's Liability Coverage of at least \$1,000,000 per occurrence / accident / employee. The policy shall contain an All States endorsement. The policy shall be endorsed to provide a waiver of subrogation in favor of Contractor. Prior to the commencement of the work, Subcontractor shall furnish Contractor certificates evidencing that this insurance is in effect with the coverages and minimum limits specified above and with insurance companies acceptable to Contractor. At the request of Contractor, Subcontractor shall provide and maintain current certificates in Contractor's files.

**11. INSURANCE:** Subcontractor, at its expense, shall obtain prior to the commencement of the Work or the furnishing of the Merchandise or Services and maintain in effect (and furnish Contractor certificates in triplicate or, if requested by Contractor, copies of the policies evidencing that it has in effect), the following minimum insurance coverage's and minimum limits with insurance carriers acceptable to Contractor that are licensed to transact business in the locale of the project and where any other Work or Services are being performed:

- A. Commercial General Liability - This insurance shall be written on an occurrence basis with limits not less than \$1,000,000.00 per occurrence and \$2,000,000.00 annual aggregate. The policy shall include coverage for Premises/Operations, Independent Contractors, Contractual Liability (sufficient to cover the liability assumed by the Subcontractor under the Agreement), Property Damage arising out of the "XCU" hazards, Completed Operations, Products Liability, Broad Form Property Damage, and Personal Injury. The Completed Operations coverage shall be maintained for at least three (3) years after the final completion of the Project of which the Work and the Merchandise or Services are a part. If the policy contains a general aggregate limitation, then the policy shall be endorsed to provide a \$1,000,000.00 specific aggregate for the Work under this Agreement. The coverages shall be written on ISO forms GC 2010 04/13 and GC 2037 04/13 or comparable coverage forms, and endorsed to provide additional coverage's and limits of insurance as required by this Agreement.
- B. Business Automobile Liability - The policy shall contain limits of not less than \$1,000,000.00 Combined Single Limit and include coverage for all Owned, Hired and Non-owned automobiles.
- C. Excess/Umbrella Liability - The policy(ies) shall be written with limits of not less than \$5,000,000.00 Combined Single Limit and shall be endorsed in the same form and manner as the Commercial General Liability, Business Automobile Liability, and Employer's Liability coverages.
- D. Professional Liability - If Subcontractor is performing any type of design or other professional services, then professional liability (errors and omissions) coverage with coverage limits of not less than \$2,000,000 for each occurrence and a \$2,000,000 annual aggregate. If the professional liability (errors and omissions) insurance is written on a claims made basis, then such insurance shall have a retroactive date no later than the date of the Agreement and shall include a supplemental extended reporting period provision. Subcontractor shall require each of its subcontractors and consultants providing engineering or architectural services to maintain separate errors and omissions (professional liability) insurance coverages to protect against claims or damages arising out of the performance of their respective services in furtherance of the Agreement.

The Contractor and Contractor's Customer (and the project owner if other than Contractor's customer) shall be named as an additional insured to Subcontractor's liability insurance policies (other than professional liability coverage's) for liabilities or claims arising out of the Merchandise, Services or Work, and such insurance shall be endorsed so as to make it primary to any liability insurance carried by the Contractor. No policy of insurance naming Contractor as an additional insured shall contain any exclusion or prohibition against first party claims or claims by any party named as an additional insured. In lieu of naming Contractor as an additional insured as required herein, Subcontractor, at its sole cost and expense, may purchase an Owner's & Contractor's Protective Liability Policy on behalf of Contractor, all in form and substance acceptable to Contractor. Certificates of Insurance, and copies of policies, if requested, acceptable to the Contractor shall be delivered to the Contractor prior to commencement of the Work. No coverage shall be canceled or allowed to expire or materially changed until at least thirty days (30) prior written notice has been given to the Contractor.

The foregoing insurance coverages are required to remain in force for a period of three (3) years after final payment by Contractor to Subcontractor, and an additional certificate evidencing continuation of such coverage shall be submitted to the Contractor prior to final payment. Subcontractor waives all rights against the Contractors' and Contractors' agents and employees, and customer, for damages caused by fire or other perils to the extent covered by insurance applicable to the project, Merchandise, Services or Work, except such rights as it may have to the proceeds of any property insurance. Subcontractor shall require similar subrogation waivers from its lower tiers in favor of Contractor and Contractors' agents and employees and customer.

**12. NO ASSIGNMENT:** Absent Contractor's written consent, Subcontractor may not assign any rights or delegate any duties or responsibilities that Subcontractor may have under this Agreement, in whole or in part without Contractor's express written consent. Any assignment or delegation in violation of the foregoing is void and not binding on Contractor. No such assignment or delegation shall bar Contractor from asserting against Subcontractor, or the transferee or assignee, or both, any claim or right that Contractor may have against Subcontractor, including any right of recoupment or set-off.

**13. UNAVOIDABLE CANCELLATION:** Contractor reserves the right in its sole discretion to cancel this Agreement including, without limitation, any project site-specific Subcontract Purchase Order, in whole or in part in the event of lockout, strike, unavoidable accident, riot, war, act of God, fire, flood, earthquake, or any other casualty whatsoever affecting Contractor or the project or Contractor's customer. Such cancellation shall be without penalty to Contractor and subject to Paragraph 15. In no event shall contractor be liable for any incidental, consequential, or special damages or for lost overhead and profit claims for premature cancellation.

**14. CANCELLATION OR SUPPLEMENTATION FOR CAUSE:** This Agreement is not subject to cancellation or modification by Subcontractor, in whole or in part, except with Contractor's express and prior written consent. Contractor may, in its discretion, terminate and rescind all or part of this Agreement including, without limitation, any project site-specific Subcontract Purchase Order, following three (3) days prior written notice and opportunity to cure to Subcontractor, in the event Subcontractor (i) breaches or otherwise fails to perform any of its obligations under this Agreement or the subcontract documents or Contract Documents, or (ii) otherwise defaults under this Agreement, or (iii) in the event Subcontractor becomes insolvent or proceedings are instituted by or against Subcontractor under any provisions of any federal or state bankruptcy or insolvency laws, or (iv) in the event Subcontractor ceases its operations, or (v) in the event Contractor requests adequate assurance of due performance and Subcontractor fails to provide such assurance in writing within three (3) days after the date of Contractor's request therefor, or (vi) in the event that Subcontractor fails to adequately staff and man the project and perform the work with reasonable diligence and promptness using sufficiently skilled employees and supervision to maintain satisfactory progress. Time is of the essence to this Agreement, and Subcontractor's failure to meet, or apparent inability to meet, any delivery date, milestone dates, or completion dates shall constitute a material breach of this Agreement justifying Contractor's cancellation. Additionally, without cancelling the Agreement, or any project site-specific Subcontract Purchase Order, Contractor may supplement Subcontractor's performance at Subcontractor's expense with Contractor's own forces or through the labor force of a third party. In event of Contractor's cancellation or supplementation Subcontractor shall not be entitled to payment for Merchandise, Services or Work furnished under this Agreement after the cancellation or supplementation date. Contractor shall have the right to deduct the cost of remedying the default, supplementing Subcontractor's forces, and completing the Subcontractor's performance under this Agreement with either Contractor's own forces or through the services of third parties. Contractor shall be entitled to deduct the cost of completion or completion or cure for sums otherwise due or to become due Subcontractor. Subcontractor shall be obligated to reimburse Contractor upon demand for any expenses or costs or damages of supplementation or cure or completion, plus 25% mark-up for Contractor's administrative costs and expenses, and shall promptly pay and reimburse Contractor all costs and damages that exceed sums due Subcontractor under the Agreement, plus 25% for Contractor's administrative costs and expenses. In the event that a termination or cancellation under this paragraph is determined to be unjustified or wrongful, then the termination or cancellation shall be treated as a "convenience termination" under paragraph 15, and Subcontractor's remedies and damages are limited as provided for in paragraph 15. Subcontractor also shall be responsible for all administrative costs and expenses of Contractor, together with legal fees and other costs of enforcement of the Agreement or cure.

**15. CONVENIENCE CANCELLATION / SUSPENSION:** Contractor shall have the option at any time, without cause, (whether or not Subcontractor is in default) upon written notice to Subcontractor, to cancel or terminate this Agreement including, without limitation, any project site-specific Subcontract Purchase Order, in whole or in part, or to delay or suspend the delivery or completion of all or part of the Merchandise, Services or Work. Such termination, suspension or delay shall be without cost to Contractor. Subcontractor only shall have the right to compensation (a) in the case of termination, for its actual costs of Merchandise, Services or Work furnished by Subcontractor in connection with this Agreement prior to such termination together with overhead and profit on such completed Work or Services or furnished and unreturned Merchandise; provided, however, that in no event shall such amount, together with all previous payments made to Subcontractor, exceed the price(s) set forth in this Agreement and the amount actually received by Contractor from Contractor's customer for the Subcontractor's Work, Services or Merchandise; or (b) in the case of delay or suspension, for reasonable handling and storage charges or overhead damages and other indirect expenses actually paid to Contractor by Contractor's customer. Under no circumstances shall Subcontractor be entitled to anticipated profits or lost profits or overhead for Merchandise, Services or Work that remain to be furnished or performed; it being understood and agreed that any and all such profit and overhead claims and damages are hereby waived and released. Subcontractor also shall not be entitled to storage charges or other consequential, incidental or special damages or termination costs or expenses. Contractor's obligation to pay Subcontractor is expressly conditioned on Contractor's receipt of actual payment from Contractor's customer on account thereof. Any and all other terms and conditions to payment set forth in this Agreement including, without limitation, paragraph 4, shall apply to payments or sums claimed due Subcontractor under this paragraph 15.

**16. SUBCONTRACTOR'S REPRESENTATIONS AND WARRANTIES:** Subcontractor represents and warrants to Contractor, in addition to all warranties implied by law, that each item of Merchandise, Services or Work described on the face hereof, together with all related packaging and labeling and furnished by Subcontractor, shall (a) be free from defects in design, workmanship and materials including, without limitation, such defects as could create a hazard to life or property or defect in Subcontractor's or Contractor's work; (b) conform in all respects with all applicable federal, state and local laws, orders and regulations, including, but not limited to, those regarding occupational safety and health and wage and hour laws; (c) not infringe or encroach upon Contractor's or any third party's personal, contractual or proprietary rights, including patents, trademarks, copyrights, rights of privacy or trade secrets; and (d) conform to all of Contractor's specifications and the subcontract documents, and to all articles shown to Contractor as samples of Subcontractor's Merchandise or Services. All warranties set forth in this paragraph, or in any other part of this Agreement (including warranties incorporated herein by reference), or which law implies, shall survive any inspection, acceptance or payment by Contractor. Such warranties shall be in addition to Contractor's other rights and remedies, and shall not be construed as a limitation on Contractor's claims or rights, including the right to enforce the Agreement against Subcontractor for the applicable statutes of limitation for breach of a written contract. Subject to the foregoing, Subcontractor warrants all goods and services for a period of no less than two (2) years from the date of delivery or completion of Subcontractor's performance under the Agreement or substantial completion of the project that is the subject of this Agreement, whichever is later. In the event of a warranty claim, Subcontractor shall promptly remove and replace any defective or nonconforming Merchandise or Work or Services at Subcontractor's sole cost and expense. Subcontractor also shall be responsible for the cost of correcting the materials, services and work and property of Contractor, Contractor's customer, or others damaged by Subcontractor's defective or non-conforming Merchandise or Services or Work, including goods and work of Contractor and others that are damaged by Subcontractor in connection with Subcontractor's performance of warranty work. Subcontractor also shall be responsible for all administrative costs and expenses of Contractor, together with legal fees and other costs of warranty enforcement or cure.

**17. MERCHANTABILITY:** Subcontractor represents and warrants to Contractor that all Merchandise or Services delivered or Work performed pursuant to this Agreement will be merchantable at the time of delivery to Contractor or performance and at the time of use by Contractor's customer, and that each will be fit and safe for sale and use by Contractor or its customers for which such items are ordinarily intended and for any particular intended use of which Subcontractor or its agents have actual or constructive knowledge.

**18. INDEMNIFICATION:** To the fullest extent permitted by law, Subcontractor shall reimburse, indemnify, hold harmless, and defend Contractor, Contractor's surety, Contractor's customer, the Project, (and the Project owner if other than Contractor's customer) (and each of their respective officers, employees, partners, agents and representatives) from and against any claim, lien, mechanics' lien, attested account, cause of action, lawsuit, demand, fine, penalty, assessment, loss, expense or damage of whatever kind or description (including legal fees and related costs and expenses), including any special, incidental and consequential damages arising from or relating to Subcontractor's performance under this Agreement, Subcontractor's negligence or other wrongful acts, or Subcontractor's breach of this Agreement, or Subcontractor's default. The scope of this indemnity agreement includes, without limitation, any and all claims, damages, demands, assessments, or lawsuits for personal injury, death or property damage, which may result from Subcontractor's negligence or other wrongful acts or Subcontractor's breach of this Agreement or its representations and warranty obligations under this Agreement or which may result from any products liability claims relating to the Merchandise or Services. The scope of this indemnity agreement applies to the acts or omissions of Subcontractor, its agents, employees, subcontractors, vendors, materialmen, and lower-tiers, or anyone for whom Subcontractor is legally responsible. Subcontractor, at Subcontractor's sole expense, shall promptly dispose of all such claims and liens, defend all lawsuits filed against Contractor or Contractor's customer or the Project owner on the account thereof, pay all judgments rendered against Contractor in such lawsuits (including any prejudgment interest assessed against any indemnity hereunder), and reimburse Contractor, Contractor's surety, and/ or Contractor's customer in cash upon demand for all reasonable expenses incurred by Contractor, Contractor's surety, and/or Contractor's customer on the account thereof including, but not limited to, attorney fees, expert witness fees and court costs. Subcontractor's obligation to indemnify Contractor under this provision shall not apply to any losses to the extent initiated or proximately caused by or resulting from the sole or concurrent negligence or willful misconduct of any of the parties indemnified hereunder. However, Subcontractor shall remain obligated to defend Contractor, Contractor's surety, and Contractor's Customer at Subcontractor's expense until such time that is conclusively determined that the cost or damage or expense or claim is not the fault of Subcontractor or others from whom Subcontractor is legally responsible. Notwithstanding anything to the contrary contained herein, Contractor at its option shall have the right to participate in the defense of any claims asserted against it, approve the selection of counsel and approve the terms of any settlements made in its name or on its behalf. The scope of Subcontractor's duty to defend and indemnify Contractor under this paragraph shall not be limited in any manner whatsoever by any immunity or limitations of liability afforded to Subcontractor under the workers' compensation laws, constitutions, or any other employee benefit acts. For purposes of this indemnity, Subcontractor specifically waives any immunity afforded it by Ohio Constitution Article 2, Section 35 and Ohio Revised Code Section 4123.74, et seq.

**19. LIEN WAIVER AND BONDING LIENS / ADDITIONAL INDEMNITY:** For good and valuable consideration, including the negotiated price for the Merchandise, Services or Work under this Agreement, Subcontractor unconditionally waives and releases any and all mechanics' lien rights or claims of lien rights against the premises or Project or attested account rights and claims against any public project fund. Subcontractor agrees not to file, or to permit its lower-tier subcontractors, vendors, laborers, unions, or materialmen (including lower-tiers), to file any mechanics' liens or attested accounts to secure payment for Merchandise, Services or Work furnished or performed in furtherance of this Agreement. Subcontractor further agrees that any such lien or attested account shall be void and unenforceable and shall constitute a substantial and material breach of this Agreement. Contractor shall be entitled to set-off against any sums due or to become due Subcontractor under this Agreement an amount equal to two times the amount of the lien or attested account or other claim of Subcontractor or any of Subcontractor's subcontractors, suppliers, vendors, materialmen, laborers, unions and lower-tiers. Contractor shall be entitled to recover from Subcontractor the attorneys' fees, bond premiums, and expenses that Contractor incurs to defend and/or discharge any such mechanics' lien or attested account claim of Subcontractor, or Subcontractor's subcontractors, vendors, suppliers, materialmen, unions, laborers, or lower-tiers. Subcontractor further agrees to indemnify, defend and hold Contractor, Contractor's customer, the Project, the premises, and the Project owners (and their respective officers, employees, partners, agents and representatives) harmless from and against any and all liens, claims, damages, demands and causes of action by any subcontractors, suppliers, vendors, laborers, unions, and other persons or entities working directly or indirectly for Subcontractor (including lower-tier subcontractors, suppliers, and vendors) arising from or relating in any way to any Work or Services or Merchandise or materials furnished in furtherance of this Agreement. Within three (3) days of receipt of written notice from Contractor, Subcontractor shall cause to be discharged and released any lien or claim or attested account of Subcontractor or any of Subcontractor's subcontractors, suppliers, vendors, laborers, unions, and other persons or entities working directly or indirectly for Subcontractor (including lower-tier subcontractors, suppliers, and vendors). In the event of a lien or attested account by a subcontractor, supplier, material man, vendor, laborer, union or other lower-tier of Subcontractor, Subcontractor shall immediately upon demand by Contractor post a surety bond or other alternate security to discharge the lien or attested account from the project and/or property, in accordance with Chapter 1311.01 *et seq.* of the Ohio Revised Code. If Subcontractor fails to honor its obligations under this paragraph, then Contractor may, at Contractor's sole option (and without incurring direct liability to any third-party to this Agreement), pay the claim directly and deduct the amount of Contractor's direct payment from the sums due Subcontractor under this Agreement. The provisions in this paragraph shall be in addition to Contractor's other rights, and Subcontractor's other obligations, in this Agreement.

**20. SHOP DRAWINGS / SUBMITTALS:** Subcontractor shall, at its own expense, prepare and submit to Contractor such shop drawings, samples, models and other submittals for the Merchandise, Services or Work as may be requested by Contractor. Such shop drawings, samples, models and other submittals (collectively "submittals") shall be approved in writing by such persons as Contractor may designate before Subcontractor proceeds under this Agreement. No approval of any submittals, nor the making of any payment to Subcontractor, shall constitute an acceptance of any Merchandise, Services or Work or impair Contractor's right of inspection or rejection or any other rights or remedies to which Contractor may be entitled, or relieve Subcontractor from any of its obligations or warranties.

**21. OWNERSHIP OF DOCUMENTS:** All plans, drawings, reports, manuals, specifications, test data or other documents or information prepared by Subcontractor pursuant to this Agreement, and all submittals of Subcontractor, shall be furnished to Contractor and shall be the property of Contractor, and Contractor shall have the unlimited right to publish, transfer, sell, license, and use all or any part of such documents or information without additional payment to Subcontractor. Subcontractor further grants a royalty-free license to Contractor for Contractor's use of such submittals in Contractor's discretion.

**22. DEDUCTIONS AND SET-OFF / AUDITS:** Any sums due and/or payable to Subcontractor shall be subject to all claims and defenses of Contractor or any of Contractor's affiliated companies, whether arising from this or any other transaction or occurrence or project, and Contractor may set-off and deduct against any such sums all present and future indebtedness of Subcontractor or any of its affiliated companies to Contractor or any of its affiliated companies.

Subcontractor shall keep full and detailed records and accounts related to the cost of the Merchandise or Work or Services under this Agreement and exercise such controls as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. Contractor and its designated representatives shall, following reasonable notice, be afforded complete access to and shall be permitted to audit any and all such project financial and accounting information and documentation, including the right to copy what Contractor, in its reasonable and sole discretion, may request or require of Subcontractor, including accounting entries, invoices, vendor documents, receipts, labor and payroll records, proposals, estimates, budgets, purchase orders, correspondence, electronic files and data, and other related documents and information.

**23. DEFECTIVE WORK, MERCHANDISE OR SERVICES:** Regardless of any prior payment by Contractor, Contractor reserves the right to return, at any time, for full credit at Subcontractor's expense (including but not limited to cost of packing and transportation to and from source) and risk, all or any part of the Merchandise, Services or Work furnished by Subcontractor which is defective or non-conforming in material or workmanship or which differs in any way from any drawings, specifications and warranties contained in the Agreement or subcontract documents or implied by law or that otherwise does not conform to the requirements of this Agreement, and Subcontractor shall have no right thereafter to cure such defects or failure to conform to such specifications and warranties or the subcontract documents. Contractor reserves the right, but shall not be obligated, to repair any defects and debit from the Subcontractor any expenses involved plus a 25% administrative expense when in Contractor's sole judgment the cost of making such repairs would be less than the cost of replacement by Subcontractor or cancellation of this Agreement or would be less disruptive to the project or operations of Contractor or Contractor's customer. Contractor also reserves the right, but shall not be obligated, to require Subcontractor to repair or replace, at Contractor's option, defective or non-conforming Merchandise, Services or Work, at Subcontractor's expense. If Contractor returns defective Merchandise, Services or Work rejects non-conforming Work under this paragraph, Contractor may additionally cancel any remaining portion of this Agreement.

**24. INSPECTION:** Contractor may inspect and test the Merchandise, Services or Work during manufacture, construction, or preparation and shall have the right to inspect the Merchandise, Services or Work at the time of delivery and/or completion. Multiple inspections shall not be grounds for objection by Subcontractor. No previous inspections by Contractor shall relieve Subcontractor of any liability under this Agreement. If defects or nonconformities for which Subcontractor is responsible under the terms of this Agreement are revealed by subsequent inspection, analysis, manufacturing operations, use or otherwise, Contractor may reject or revoke its acceptance of the Merchandise, Services or Work, in whole or in part, at any time after such defects or nonconformities are discovered, demand Subcontractor cure or replace the Work, Services or Merchandise, or Contractor may pursue its other rights or remedies under this Agreement as Contractor, in its discretion, shall determine are in its best interest and those of its customer and/or the project owner.

**25. PASSAGE OF TITLE:** Until Contractor has inspected the Merchandise, Services, or Work furnished under this Agreement and has accepted it as being in conformity with this Agreement, Subcontractor's delivery obligation shall not be deemed complete, nor shall title pass to Contractor. Subcontractor represents and warrants to Contractor that Subcontractor shall have good title to the Merchandise, Services or Work, free and clear of all liens at the time of Subcontractor's delivery or furnishing of the Merchandise, Services or Work.

**26. CHANGES:** Contractor shall have the right to make changes in this Agreement, but no claim for payment of additional compensation or additional time shall be recognized or valid, unless authorized in writing and in advance by Contractor. If Subcontractor maintains or claims that such changes affect the time of performance or the price of the Work, Merchandise or Services, then Subcontractor shall notify Contractor in writing immediately but in no event later than twenty-four (24) hours after Subcontractor had knowledge of the change or such other shorter period as may exist under the subcontract documents for Contractor to give notice to Contractor's customer. There shall be no adjustment to the time of delivery or price to be paid for Merchandise, Services or Work unless and until Contractor signs a change order authorizing such adjustment. Subcontractor shall be deemed to have conclusively waived and any all rights to payment of additional compensation or adjustment of the time for performance if Subcontractor fails to strictly comply with the provisions of this paragraph relating to notice and authorizations for additional compensation. All risk of loss shall remain with Subcontractor. The Subcontractor understands that Contractor will issue change orders a form substantially similar to the form attached to this Agreement.

**27. CONTRACT AND JURISDICTION:** This Agreement and the effect of any contract formed pursuant hereto shall be construed and enforced in accordance with the laws of the State of Ohio.

**28. NON-WAIVER:** The failure of the Contractor to enforce at any time or for any period of time any of the provisions hereof shall not be construed to be a waiver of such provisions or of the right of Contractor to enforce each and every such provision at anytime.

**29. MISCELLANEOUS:** (a) All rights granted to Contractor hereunder shall be in addition to, and not in lieu of, Contractor's rights arising by operation of law; (b) any provisions of this Agreement which are typewritten or handwritten by Contractor shall supersede any contrary or inconsistent printed provisions; (c) no modification of the terms of this Agreement shall be valid unless in writing and signed by Contractor; (d) should any of the provisions of this Agreement be declared by a court of competent jurisdiction or any arbitrator to be invalid, such decision shall not affect the validity of any remaining provisions; (e) all of the terms herein shall apply to additional quantities of Merchandise, Services or Work ordered by Contractor except to the extent covered by a new site-specific Subcontract Purchase Order; (f) this Agreement, together with any information or documents incorporated herein by reference, shall be deemed to contain the entire Agreement between Contractor and Subcontractor and to constitute the complete and exclusive expression of the terms of the parties understanding and business dealings. All prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein.

**30. CLAIMS:** Subcontractor agrees that it shall not be entitled to recover any damages or additional costs from Contractor on account of claims for additional compensation, changes, delays, hindrances, interferences, lost productivity, or other impact damages of whatever kind or description unless and until Contractor recovers and collects such damages and costs from Contractor's customer or any other responsible party, including any other lower tier of Contractor. Such recovery and collection by Contractor from the Contractor's customer or the other responsible party is an absolute condition precedent to Subcontractor's right of recover additional compensation from Contractor. Contractor shall act as a conduit for Subcontractor's claims and alleged damages and costs, and Subcontractor shall be obligated to compensate Contractor for all costs and expenses, including legal and consulting fees and administrative expenses, that Contractor incurs to present Subcontractor's claims to the Contractor's customer for consideration of payment or to arbitrate, mediate, or litigate such claims. Subcontractor shall furnish all required testimony and documentation to support its claims. Contractor assumes no fiduciary responsibility for prosecution and recovery on Subcontractor's behalf. In the event that Contractor recovers and collects damages from Contractor's customer or another responsible party (including another subcontractor of Contractor) on account of Subcontractor's claims through negotiation, litigation, mediation, or arbitration, then Contractor shall tender to Subcontractor the amount actually recovered and collected by Contractor less the cost of Contractor's prosecution and administrative expenses and expert witness and consulting fees, and Subcontractor shall accept that amount as payment in full for its claims and damages and additional costs and does hereby unconditionally release Contractor from and against any additional liability or damages on the Subcontractor's demands and claims. If the claim or demand is denied for any reason by the Contractor's customer or other responsible party or by any fact finder (including a judge or arbitrator), or the amount claimed or demanded or is not collected for any reason whatsoever, the Subcontractor shall release Contractor from any and all liability for the claims and damages. Any and all other conditions precedent to payment set forth in this Agreement, including paragraph 4, shall apply equally to payments and amounts Subcontractor claims due under this paragraph 30.

**31. DISPUTES:** At the sole option of Contractor, any and all claims, disputes, controversies, demands, and causes of action of whatever nature, kind or description arising from or relating to this Agreement, including without limitation contract, equity, tort or legal claims, and further including without limitation claims relating to rights of payment or interpretations of this Agreement or breach thereof, shall be submitted to mandatory and binding arbitration before the American Arbitration Association in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The decision and Award of the Arbitrator(s) shall be final and binding on Contractor and Subcontractor, and the decision and Award may be reduced to judgment and enforced in any court of competent jurisdiction. This agreement to arbitrate shall be specifically enforceable under the Ohio Arbitration Act and the Federal Arbitration Act. The arbitrator(s) shall decide any issues relating to waiver of rights or timeliness of claims. Unless Contractor agrees otherwise, all arbitration proceedings shall be conducted in Cleveland, Ohio. Contractor shall have the right, at its option, to join its consultants, contractors, subcontractors, suppliers, vendors or other third parties supplying services or materials in furtherance of the project, with whom Contractor has an agreement

to arbitrate, as a party to any arbitration commenced pursuant to paragraph 31 of this Agreement. Contractor also shall have the right, at its option, to join Subcontractor in any arbitration or other proceeding between or among the Contractor and the Contractor's customer, or the project owner, or any other third party.

**32. PRECEDING WORK.** Subcontractor, before beginning performance, shall carefully examine the work of others which may affect its Merchandise, Services or Work, determine whether it is in a fit, ready and suitable condition for the proper and accurate performance of the Work and furnishing of the Merchandise or Services, use all means necessary to discover defects in such other work, and notify Contractor in writing of any claimed deficiencies which may affect the work or merchandise or services. If such notice is not so given, all such work shall be deemed acceptable to Subcontractor. In case of a dispute as to whether such other work is deficient, Subcontractor nevertheless shall proceed immediately with the Work or services or furnishing or Merchandise when notified by Contractor in writing to proceed.

**33. CLEAN-UP AND PROTECTION OF WORK.** Subcontractor at all times shall keep the project and premises free from rubbish, debris and obstructions caused by its operations (including surplus materials, crates and packing, etc., brought to the premises by Subcontractor or by others for the benefit of Subcontractor). At the time of completion of the work and furnishing of the merchandise or services in each area, Subcontractor shall leave the area "broom clean" and shall remove all of its tools, equipment, scaffolding and surplus materials. Subcontractor shall not damage the work of others by its operations, and shall repair or pay the cost of repairing any such damage done by Subcontractor or Subcontractor's employees, agents, representatives and lower-tiers.

**34. DAMAGE OR DESTRUCTION.** Subcontractor shall cover and at all times adequately protect the Merchandise, Services or Work from damage until final acceptance by Contractor and Contractor's customer, and shall properly store and protect its own materials furnished to it by others. Subcontractor shall be responsible for any damage to or destruction of the Merchandise, Services or Work, and any other equipment, tools and personal property at the premises, whether owned, rented or used by Subcontractor or anyone performing any of the work. Subcontractor at its expense shall, as directed by Contractor, replace, repair or restore any Merchandise, Services or Work thereof which are damaged or destroyed, whether such destruction or damage results from acts of God, fire, public enemy, civil commotion, vandalism, acts of omission or commission by any person, firm or corporation. Risk of loss with respect to the Merchandise, Services or Work shall remain with Subcontractor until final acceptance of the completed work and the Merchandise, Services or Work. Until such final acceptance, any damage or destruction of the Merchandise, Services or Work, however caused, shall be made good by Subcontractor at no extra charge or cost to Contractor. Such rework at Subcontractor's expense shall not preclude Subcontractor from making a claim under any insurance maintained for the benefit of Subcontractor, but the right to make or the pendency of such claim shall not give cause to Subcontractor to delay the commencement or completion of such rework.

**35. SAFETY / ACCIDENT REPORTS.** Subcontractor shall require its employees at the premises to wear and use safety and health equipment, to work in harmony with others working at the premises, and to comply with the Contractor's customer's or Contractor's regulations, and the rules and regulations imposed by law, covering working conditions. Contractor shall have the right to furnish any safety or health equipment which Subcontractor fails to provide promptly, and Subcontractor shall upon demand pay Contractor's cost thereof plus 25% for Contractor's administrative expense and overhead and other indirect costs. Subcontractor shall indemnify Contractor for fines, penalties and corrective measures, and damages, and shall reimburse Contractor for costs and expenses, including attorney fees, which result from acts of commission or omission by Subcontractor or its lower tier subcontractors or vendors or their assigns or their respective employees and agents in failing to complying with such safety rules and regulations. Subcontractor, immediately after the occurrence of each accident or other event involving injury to or death of any person or damage to any property on the project or in any way relating to the Work, merchandise or services, shall deliver to Contractor a report thereof, which may be a copy of any accident report delivered to its insurance carrier. Contractor's standard safety policy and requirements are incorporated into this Agreement.

Subcontractor's project supervisor and safety director will be required to attend a pre-job safety meeting which will be held prior to the subcontractor's mobilization. Subcontractor acknowledges and agrees that one of the reasons for its selection is its special knowledge of the risks and risk prevention measures in its field of expertise. Subcontractor is primarily responsible for ensuring safety in its day-to-day project operations. While subcontractor shall abide by the provisions of the site safety plan developed by Contractor and/or Contractor's customer (or the project owner), Subcontractor shall be solely responsible for preparing and enforcing its own trade and project specific site safety plan. Subcontractor shall require its employees and all of its permitted site visitors and its lower tier vendors and sub trades at the site to wear and use all required safety and health equipment, to work in harmony with others at the project, and to comply with all project safety requirements as detailed in the subcontract documents. Subcontractor shall indemnify Contractor and Contractor's customer (and the owner) for fines, penalties and corrective measures, and damages, and shall reimburse each of them for costs and expenses, including, but not limited to, attorney fees incurred by any one or more of them that result from acts of commission or omission by Subcontractor or its lower tiers or their assigns or their respective employees and agents in failing to comply with federal, state or local safety rules and regulations or to comply with the provisions of any applicable site safety plan. Such indemnification applies, without limitation, to Occupational Safety & Health Act ("OSHA") citations, workers compensation claims (including VSSR claims), and all civil or criminal actions relating to the acts of subcontractor or any injury to subcontractor's employee(s) or any other person.

Subcontractor shall immediately report to Contractor in writing any unsafe conditions known to Subcontractor. Subcontractor shall not perform any work until it has verified that no unsafe conditions exist and/or any unsafe conditions have been corrected. Where required by regulations or the terms of a site safety plan, such verifications shall be by Subcontractor's competent person. Subcontractor shall remedy any unsafe conditions caused by Subcontractor's own actions prior to continuing with work in its areas, and shall advise other employers with employees in the area of the conditions. Contractor's project team is authorized to stop or suspend any work that is being performed in an unsafe manner, and Subcontractor shall not be entitled to any extension of time to complete its work on account of such stoppage or suspension. In addition to the other remedies in this Agreement, Contractor may assess and charge Subcontractor, after one initial warning, \$500.00 for each safety violation by Subcontractor. Such general right of Contractor shall not alter the obligation of Subcontractor to be responsible for safety in its specific trade, and the exercise of such right by Contractor shall not result in Contractor's being regarded as an expert in subcontractor's trade or responsible for the safety of Subcontractor's employees, which shall always remain the responsibility of Subcontractor.

Subcontractor, immediately after the occurrence of each accident involving injury to or death of any person or damage to property on the project or in any way relating to Subcontractor's Work, Services or Merchandise, shall deliver to Contractor a report thereof, and other pertinent information, which is to include a copy of any accident report delivered to Subcontractor's insurance carrier. Subcontractor shall properly record and investigate any injuries and any "near-miss" situations that occur on the jobsite or in connection with Subcontractor's work. Subcontractor shall fully cooperate with Contractor and its representatives in any investigation of safety or other issues. Subcontractor shall also immediately report any OSHA investigation relating to the site to Contractor and provide to Contractor a copy of any materials or communications supplied by OSHA to Subcontractor.

Subcontractor will not permit any third-party or non-employee, including state or federal officials and vendors or subcontractors, to enter the project site without Contractor's prior written authorization.

**36. LABORERS ON SITE.** Subcontractor's employees shall be skilled in their trades. Any employee of Subcontractor may be refused admittance to the premises or may be requested to leave the premises at any time by Contractor, and Contractor shall not be required to have or to state any reason for such action. In the event that any employee or employees of Subcontractor are so barred from the job, Subcontractor shall immediately



replace such employee or employees with employees satisfactory to Contractor. Should any workers performing the work engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Contractor may, at its option and without prejudice to any other remedies it may have, after forty-eight (48) hours written notice to Subcontractor, provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Subcontractor. Further, Contractor may at its option, without prejudice to any other remedies it may have, terminate this Agreement, and shall have the right to enter upon the premises and take possession, for the purpose of completing the work, and the furnishing of the merchandise or services and all of Subcontractor's materials, tools and equipment thereon and to furnish the merchandise or services and complete the work either with its own employees or other subcontractors; and in case of such termination by Contractor, Subcontractor shall not be entitled to receive any further payments under this Agreement or otherwise but shall nevertheless remain liable for any damages which Contractor incurs. If the expenses incurred by Contractor in completing the Work shall exceed the unpaid balance due Subcontractor, Subcontractor shall pay the difference to Contractor, together with any other damages incurred by Contractor as a result of Subcontractor's default.

37. **RESERVED GATES:** Reserved gates may be established on the premises. If established, Entrance No. 1 shall be utilized by non-union firms, and their subcontractors, employees, suppliers and material handlers. Entrance No. 2 shall be utilized by union firms, and their subcontractors, employees, suppliers and material handlers. These entrances, if established, shall not be misused. The entrances shall also be observed by the management of Subcontractor and its subcontractors, suppliers and materialmen as well as all other employees. In the event that Subcontractor violates the provisions of this paragraph, Contractor shall have the right, without prejudice to any other rights or remedies it may have, to terminate this Agreement and exercise the remedies provided in this Agreement.

38. **UNION CONTRACTS / PREVAILING WAGE:** Subcontractor shall be bound by the terms, conditions, and wage rates contained in any and all of the collective bargaining agreements between Contractor and any union, which are incorporated by reference into this Agreement. Wage rates and benefits paid to employees of Subcontractor and its lower-tiers at the work site shall be no less than the prevailing wage rates in the locality where the work is performed or otherwise applicable to the project. In accordance with the other provisions of this Agreement, Subcontractor shall be bound by and shall comply in all respects with any and all applicable wage determinations applicable to the project, including Davis Bacon requirements or state prevailing wage requirements. Certified payroll compliance shall be verified by Subcontractor and warranted and represented by Subcontractor to Contractor at least monthly by, among other things, the submission of fully compliant prevailing wage reports and records and other documents as required by the subcontract documents and any governmental agency having authority or jurisdiction over the work. Certified payroll reports shall be submitted to the Contractor, "Attn: Certified Payroll Department."

39. **BONDS:** Subcontractor shall furnish to Contractor, if required by Contractor in its sole discretion and at no additional cost to Contractor, a payment and performance bond in accordance with the requirements of the subcontract documents, on a form and from a surety acceptable to the Contractor. The bond shall name Contractor as Obligee, shall have a penal sum not less than the entire subcontract price, and the penal sum shall be adjusted automatically to cover any increases in price on account of extra work without the necessity of surety approval. The bonded obligation shall cover any and all maintenance and warranty obligations of Subcontractor under this Agreement. Failure to supply the bond(s) upon demand shall constitute a material breach of and default under this Agreement.

In lieu of a bond, at Contractor's sole option and discretion, Contractor may request a cash security agreement in an amount equal to fifteen percent (15%) of the amounts paid and/or to be paid to Subcontractor under this Agreement. Contractor may hold such cash security amount from payments that become due Subcontractor. Such amounts shall be in addition to any amounts held by Contractor's customer as retainer, if any. The cash security may be held by Contractor until the project is accepted by Contractor's customer and all of Subcontractor's warranty obligations have been fully satisfied and such warranties have expired by the terms of the Agreement.

40. **NOTICES.** Except as otherwise specifically provided, all notices, claims requests, demands and proposals given hereunder by either party shall be in writing and (i) mailed by first class mail, (ii) delivered in person, (iii) sent by telecopy with confirmed receipt thereof, or (4) sent by a nationally-recognized overnight courier service, if to Contractor at its Hinckley, Ohio office, and if to Subcontractor, to the address stated in the site-specific Subcontract purchase order, or in either case, to such other address as may be furnished for such purpose. Any notice by Subcontractor of a claim for additional costs, damages or extensions of time shall be made only by certified mail, return receipt requested, to Contractor's Hinckley, Ohio offices. Any notice given in the manner provided in this Section shall be deemed given when mailed, sent or delivered and shall be deemed received when actually received. An electronic copy of what is delivered in accordance with this paragraph may be sent via email, but such notice alone will not relieve Subcontractor of its obligations to send the actual document by one of the four specified means of providing notice to Contractor.

**Subcontractor's Federal Employer Identification No:** \_\_\_\_\_

**Subcontractor's State Unemployment Insurance No:** \_\_\_\_\_

**ACCEPTED AND AGREED TO:**

*SUBCONTRACTOR / VENDOR  
NAME:*

By:

Printed Name & Title:

Date:

*CONTRACTOR:*

THE GREAT LAKES CONSTRUCTION CO.

By:

Printed Name & Title:

Date:

**THE GREAT LAKES CONSTRUCTION CO.  
SUBCONTRACT CHANGE ORDER FORM**

**CHANGE ORDER No.** \_\_\_\_\_

PROJECT: \_\_\_\_\_ CHANGE ORDER NO.: \_\_\_\_\_

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

PURCHASE ORDER NO.: \_\_\_\_\_

PURCHASE ORDER DATE: \_\_\_\_\_

You are hereby authorized to make the following changes in this Purchase Order and Subcontract Documents: \_\_\_\_\_  
\_\_\_\_\_

The original Purchase Order Price was .....\$

Net change by previously authorized Change Orders .....\$

The Adjusted Purchase Order Price prior to this Change Order was .....\$

The Purchase Order Price will be (increased) (decreased) (unchanged) by .....\$

The new Purchase Order Price, including this Change Order, will be.....\$

The dates set forth on the Contractor's Schedules for the Subcontractor's Work are hereby changed as follows:

\_\_\_\_\_  
*(If blank, then Contractor's Published Schedule shall remain unchanged)*

**This Change Order fully compensates Subcontractor for any and all costs directly or indirectly related to this additional or extra work and for any direct or indirect effect upon other Work or Schedule under the Purchase Order and other Subcontract Documents. No claim for impact costs resulting from the performance of this Change Order will be permitted except to the extent included in the Change Order payment above, and any such cost impact shall be considered waived and released. No extension of time for the performance of this Change Order work or any other work under the Purchase Order or Subcontract Documents shall be allowed as a result of this Change Order, except as otherwise specifically provided above. All other terms and conditions of the Purchase Order, Subcontract Documents, and agreement between Contractor and Subcontractor remain unchanged.**

**Contractor: THE GREAT LAKES CONSTRUCTION CO.**

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

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

**Subcontractor:** \_\_\_\_\_

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

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

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

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

- 3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.
- 4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

**ATTACHMENTS**

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

**I. GENERAL**

- 1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

- 2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

**II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)**

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

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

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

1. **Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### 6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

#### 10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

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

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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

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

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

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

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

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

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

#### 1. Minimum wages (29 CFR 5.5)

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

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

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

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

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

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

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

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

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

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

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

## 2. Withholding (29 CFR 5.5)

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

#### 10. Certification of eligibility (29 CFR 5.5)

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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

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

1. **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1 of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section. 29 CFR 5.5.

\* \$27 as of January 23, 2019 (See 84 FR 213-01, 218) as may be adjusted annually by the Department of Labor; pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990).

3. **Withholding for unpaid wages and liquidated damages.**  
The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section. 29 CFR 5.5.
4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs 1 through 4 of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1 through 4 of this section. 29 CFR 5.5.

#### VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

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

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or

equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).
5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

#### VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance

with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

### **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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

### **IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)**

This provision is applicable to all Federal-aid construction contracts in excess of \$150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.326.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders

or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.326.

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

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

#### **1. Instructions for Certification – First Tier Participants:**

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant

who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

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

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

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

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

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

## 3. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

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

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

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart 1, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is

submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

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

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

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(b) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(c) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

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

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

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

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

## **XII. USE OF UNITED STATES-FLAG VESSELS:**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

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

**ROAD CONTRACTS** (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
  - a. To the extent that qualified persons regularly residing in the area are not available.
  - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
  - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.
2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.
3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.
5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.
6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**ACKNOWLEDGED AND AGREED:**

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

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

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

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