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**REQUEST FOR PROPOSALS (RFP)  
PROGRESSIVE DESIGN-BUILD CONTRACT  
EXHIBITS**

**PID 110873  
PROJECT (24)3002  
JEF SR7 25.67 Mine Subsidence  
Restoration**

**Draft – January 5 2024**

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## LIST OF EXHIBITS

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<sup>1</sup> Note: Exhibit A is contained in the Progressive Design Build Contract (PDBC)

EXHIBIT W: PRICE FLUCTUATION CLAUSES

EXHIBIT X: DIGITAL DATA FOR MATERIAL TICKETING

EXHIBIT Y: [RESERVED]

EXHIBIT Z: RISK REGISTER

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## EXHIBIT B: CONTRACT PARTICULARS

### Compensation Amounts

The Maximum Sub-Phase 1A Prime Compensation amount subject to adjustment for Change Orders as set forth in PDBC Section 11.2 (Compensation for the Sub-Phase 1A Work) is \$50,000.

The Maximum Sub-Phase 1B Prime Compensation amount subject to adjustment for Change Orders as set forth in PDBC Section 11.3 (Compensation for the Sub-Phase 1B Work) is \$350,000.

### Schedule Milestones for Phase 1

The Sub-Phase 1B Proposal shall be submitted no later than 90 Days<sup>2</sup> after the Sub-Phase 1A NTP (the "Sub-Phase 1B Proposal Due Date").

The Phase 2 Proposal shall be submitted no later than 180 Days<sup>3</sup> after the Sub-Phase 1B NTP (the "Phase 2 Proposal Due Date").

### Phase 2 Mark-Up Percentage

The Phase 2 Mark-Up percentage shall be xx% as proposed in the Proposal and shall include profit, G&A and all other Costs and expenses of the Contractor not included in the cost of the Work.

### Schedule Milestones for Phase 2

The target date for the Substantial Completion Deadline is 5/31/2026.

### Liquidated Damages for Phase 2 Work

The amount of liquidated damages to be deducted for each Day by which the Substantial Completion Date exceeds the Substantial Completion Deadline, subject to PDBC Section 13.7 (Failure to Complete On Time) shall be \$900 per day.

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<sup>2</sup> Based on: 10/11/2024 for Sub-Phase 1A NTP

<sup>3</sup> Based on: 9/20/24 for Sub-Phase 1B NTP, 4/1/25 for Phase 2 NTP

## EXHIBIT C: PROPOSAL COMMITMENTS

[Insert in this Exhibit C the key commitments from the Proposal, excluding the Key Personnel and Principal Participants' details which shall be inserted in Exhibit D (Key Personnel)]

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## EXHIBIT D: KEY PERSONNEL

[Insert in this Exhibit D the names and qualifications of the Key Personnel including all details from the Proposal]

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## **EXHIBIT E: TECHNICAL REQUIREMENTS**

Refer to the separate document entitled "Technical Requirements"

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## **EXHIBIT F: MINE GROUTING AND OVERBURDEN EXECUTION PLAN REQUIREMENTS**

The Contractor shall develop a Mine Grouting and Overburden Execution Plan. The Mine Grouting and Overburden Execution Plan shall identify the Contractor's approach to grouting the mine voids as well as addressing the soft overburden.

The Mine Grouting and Overburden Execution Plan shall also address the payment mechanisms, quantity tracking, and quality control for the material used to fill the mine voids. It is the Department's intent to pay actual costs for all materials utilized.

The Mine Grouting and Overburden Execution Plan shall also include a Design Quality Management Plan which is the Contractor's plan describing the internal quality control and quality assurance procedures.



# EXHIBIT G: OPINION OF PROBABLE COST (OPC) AND PRICING PROCESS

## Introduction: Process Framework

The contents of this Exhibit G are intended to serve as a framework providing general parameters for the development, refinement and conversion of OPCs into initial GMP Price Proposals. This framework may be modified by the Parties upon their mutual agreement and with the input of their respective consultants, including the Department.

## Part A: Establishment of Cost Model; Estimating Methodology; and Training Program

### 1. Establishment of Cost Model

No later than 30 Days after the Sub-Phase 1B NTP, the Contractor shall convene, attend, and actively participate in a meeting to discuss and develop an initial approach to costing the Project with the Department. The purpose of this meeting is to establish the baseline Cost Model for the development of OPCs and GMP Price Proposals, including design and construction cost and Project Schedule estimates. This initial meeting will also establish the plan to communicate changes in scope, quantity, risk, and other information required to affirm a consistent foundation for cost and schedule estimation.

### 2. Estimating Methodology Report

No later than 60 Days after the initial approach to cost meeting, the Contractor shall document and submit to the Department for approval a report setting forth the description and assumptions that communicates the estimating practices, processes and format to be developed on an Open Book Basis for each Price Proposal ("**Estimating Methodology Report**").

### 3. Training Program

Together with submission of the Estimating Methodology Report and proposed Cost Model(s), the Contractor shall develop a Department-approved program for the training of the Department staff on the corresponding Cost Model and related procedures, historical data, categorization of costs, estimating techniques and tools, hardware, software, and any other systems employed by the Contractor for cost and schedule estimation for the Project. The Contractor shall deliver the training as described in and at the times set forth in the approved training program.

## Part B: Opinion of Probable Cost and Schedule of Values

### 1. Overview of OPC Development Process

After delivery of the Estimating Methodology Report and Cost Model, the Contractor will prepare OPCs in a format agreed to by the Contractor and the Department, which will generally be consistent with that described in this Part B. OPCs will be developed on an Open-Book Basis and in a collaborative manner both formally and informally and with reference to the applicable milestones.

2. Reserved

3. Reserved

#### 4. OPC Phase 2 Work Milestones

OPCs for the Phase 2 Work will be developed in accordance with the general terms and conditions set forth under Section 5 below for delivery upon the following milestones (and such additional milestones as the Department may reasonable establish):

- (a) During Sub-Phase 1B, based upon approximately 30% of completed Design;
- (b) During Sub-Phase 1B, based upon approximately 60% of completed Design; and
- (c) Prior to the end of Sub-Phase 1B, based on approximately 90% of completed Design.

#### 5. Development of OPCs for Phase 2 Work

**A. Timelines for Development and Revision of OPCs** The following are the timelines pertaining to the development of OPCs, which timeframes may be modified upon mutual agreement of the Department and the Contractor:

- (a) Approximately 45 Days before the completion of an OPC (or such other timeframe upon which the Contractor and the Department may agree), the Contractor shall submit to the Department the applicable Project Scope and Design Documents pertaining to the OPC.
- (b) Approximately 30 Days before the completion of an OPC (or such other timeframe upon which the Contractor and the Department may agree), the Contractor shall provide a breakdown of quantities in accordance with the agreed upon Estimating Methodology and Cost Model. The Contractor and Department will participate in a quantity reconciliation meeting to verify that quantities are within a mutually agreeable amount.
- (c) Upon completion of quantity reconciliation, the Contractor and the Department will develop their estimates to account for all Work, complete development of crews, and assign production rates.
- (d) Approximately 15 Days before the anticipated completion of the 90% Design OPC (or such other period to which the Department and Contractor may agree), the OPC will be compared to the estimate prepared by the Department (the "Department's Estimate"). If the OPC and the Department's Estimate differ by more than a percentage acceptable to the Department, the Department, the Contractor and, if required at the Department's sole discretion, the Department's Office of Estimating will conduct a review to determine where the cost estimates differ and what assumptions or details were used to determine each difference.
- (e) For avoidance of confusion, the Department will not be preparing a Department Estimate for the 30% Design and 60% Design OPCs. The Contractor will still be required to meet all other requirements of this Exhibit G.

**B. Standards Pertaining to Development of OPCs** The following standards shall apply to the development of OPCs throughout the Project:

- (a) The Contractor shall prepare each OPC on the basis described in the Estimating Methodology Report and the approved Cost Model or as otherwise agreed to by the Parties;

- (b) Each OPC shall be consistent with the then-current Project Schedule or updated draft of the Project Schedule incorporating the Phase 2 Work as part of an integrated and cohesive cost and schedule build-up for the Phase 2 Work. The OPC shall clearly delineate (i) Self-Performed Work, (ii) Work to be performed by a Subcontractor that is a Component Firm, and (iii) Work assumed to be performed by a Subcontractor that is not a Component Firm, consistent with PDBC Section 8.2 (Limitation on Subcontracted Work);
- (a) The Contractor shall attempt to obtain such number of quotes from potential Subcontractors and Subconsultants as is contemplated under the approved Subcontractor Bidding and Selection Plan. This information shall be provided with each OPC and the Contractor shall require its potential Subcontractors and Subconsultants to share their information, quotes, scope of work bid, and product or services data with the Department and the Department's Office of Estimating. Where the approved Subcontractor Bidding and Selection Plan does not contemplate obtaining quotes from potential Subcontractors, the Contractor shall provide the estimate for the applicable scope of work and supporting data, which, to the extent available, shall include data from recent quotes obtained for equivalent scopes of work, products or services on other projects;
- (b) No OPC shall include cost items already included in OPCs that have been converted to Contract Prices, cost items expressly retained by the Department, or cost items not required by the Department; and
- (c) Each OPC shall be independently prepared by the Contractor but in coordination with the Department.

**C. Contents of OPCs** Each OPC submitted by the Contractor shall contain the following elements in the following order, together with such additional contents upon which the Contractor and the Department may agree:

- (i) A summary memorandum consisting of a narrative summary of the OPC that includes:
  - (A) The applicable Project Scope, Design Documents and Construction Documents pertaining to the corresponding OPC;
  - (B) A list of clarifications and assumptions made by the Contractor in the preparation of the corresponding OPC to supplement the information in the applicable Project Scope, Construction Documents and Design Documents;
  - (C) The proposed GMP, which shall include a breakdown of the then-current estimate of the cost of the Work in a commercially reasonable format consistent with the approved Cost Model;
  - (D) The proposed Contractor's Risk Contingency together with the then-current Risk Register setting forth those Risk Events for which Contractor has assumed financial responsibility;

- (E) If so elected by the Department, the proposed Department's Risk Contingency together with the then-current Risk Register setting forth those Risk Events for which the Department has assumed financial responsibility;
  - (F) A summary of costing activities since the previous OPC submittal;
  - (G) Changes subsequent to the previous OPC submittal and reasons for the changes;
  - (H) Responses to the Department's comments on the previous OPC submittal;
  - (I) The then-current Project Schedule or updated draft of the Project Schedule upon which the OPC is based;
  - (J) A list of proposed Materials to be installed and the procurement status for each (including Supplier selection activities);
  - (K) A list of critical or long lead Materials;
  - (L) A list of proposed Subcontracts with the procurement status for each (including Subcontractor selection activities);
  - (M) A cost summary table;
  - (N) An updated Schedule of Values showing a line-item cost breakdown of the cost of Work as further detailed under Section 5 below;
- (ii) A certification from the Contractor that all costs included in the OPC are allowable in accordance with the cost principles in 2 CFR part 200 subpart E, and the OPC does not include any costs which are expressly unallowable under applicable cost principles of 2 CFR part 200 subpart E; and
  - (iii) Such other information as is necessary, in the Department's sole discretion, to satisfy the Department as to the reasonableness of the OPC and that the Contractor's pricing and other financial terms for the Work are fair and reasonable.

**D. Cost of Work** Each OPC shall be based upon the total cost of Work (as described herein). The cost of Work will be the sum of the items D1 through D8 below.

#### **D1. Labor Costs**

Labor Costs will include costs for Professional Services undertaken in the performance of the Phase 2 Work by personnel and entities that meet the definition of FAR Participants shall be calculated by utilizing the formula described in Section 11.1.1.2 of the PDB Contract.

Construction labor costs for non-FAR Participants will be based on the hourly wages multiplied by 2.2 plus the fringe benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by prevailing wage laws or by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

Construction labor cost will also include the following payroll taxes and legally required insurances:

- (a) Social Security Tax
- (b) Medicare Tax
- (c) Ohio Workers' Compensation Premiums
- (d) State and Federal Unemployment Insurance
- (e) Longshore and Harbor Workers' Compensation Insurance for work from a barge or ship, or unloading material from a barge or ship.

The hourly rates multiplied by 2.2, plus the fringe benefits, plus the taxes and insurance listed above shall then be increased by the Phase 2 Markup percentage identified in Exhibit B (Contract Particulars).

## **D2. Material Costs**

The amounts the Contractor actually paid for Materials, including temporary Materials and Materials not incorporated into the Work, which were purchased by the Contractor directly relating to the Work, including applicable taxes transportation thereof, cost of inspection, testing, storage, or handling.

## **D3. Equipment, Tools, Equipment Operation, Maintenance and Repair**

Costs for owned or rented Equipment necessary to complete the Work will be included at established rates given in the Equipment Watch Cost Recovery (formerly Rental Rate Blue Book), by Equipment Watch, a division of Penton Business Media, Inc. No Phase 2 Markup will be applied to Equipment costs. All costs for the operation, maintenance, and repair of Equipment furnished by the Contractor to undertake the Work. The Phase 2 Markup will not apply to the costs of Equipment.

## **D4. Indirect Costs**

To the extent not included in any other item under D1-D8, Indirect costs will be included as actual costs for the following items:

- (a) **Site Office Expense:** Rental of buildings, maintenance, removal, utilities, office and engineering expendables, furniture, computers (including corporate IT charges), tablets, telephones and infrastructure.
- (b) **Insurance and Taxes:** Insurance other than that based on payroll, such as railroad protective, Equipment insurance, and other Contractor required insurances. Taxes (excluding payroll taxes) such as property tax and any special local or State sales tax (if any), should be included with the applicable taxed item.
- (c) **Bond Premiums:** Premiums on required bonds, including the Payment Bond and Performance Bond.
- (d) **Temporary Buildings:** Cost of ownership or rental, set-up maintenance and removal of such as warehouses, first aid buildings and other miscellaneous structures.
- (e) **Personnel expense:** Small tools and supplies (unless carried in the Equipment portion of the OPC), safety expendables, drug screen testing, training, physicals,

hiring expense; include any per-diem costs for indirect personnel and construction labor.

- (f) **Project Utilities:** Site utilities such as temporary electric, water internet and sanitation.
- (g) **Mobile Equipment:** Overhead vehicles, maintenance equipment and personnel (if not included in Labor or Equipment portions of the OPC), and general service equipment (if not included in the Labor portion of the OPC).
- (h) **Construction Plant:** Site fences, parking areas, material yards, temporary access and other special construction items not included in Labor or Equipment items.
- (i) **Quality Control:** Cost of quality control labor, equipment supplies, outside services, and Contractor hired-personnel and on-site quality supervision, in each case, to the extent not included under the Labor item of the OPC.
- (j) Any other auditable indirect Project costs not attributable to any other item under D1-D8.

#### **D5. Subcontracted Work**

Costs for subcontracted Work that is competitively procured (advertised for bid submissions, regardless of the number of bids actually received) will be included at the amount of the selected Subcontractor's bid.

Costs for subcontracted Work that is not competitively procured will be included in accordance with this Part B with a Subcontractor mark-up proposed by the Contractor which will be verified by the Department.

#### **D6. Mobilization**

Costs for mobilization will be included at the actual estimated costs for the elements of Work included in mobilization, but unless otherwise agreed to by the Department, the total costs of mobilization shall not exceed 2.5 percent of the Price Proposal for the Phase 2 Work or any other Work Package.

#### **D7. Contractor's Risk Contingency**

The Contractor's Risk Contingency amounts included in an OPC shall be fully identified and delineated based upon the aggregate amount of the value of those Risk Events for which the Contractor has assumed financial responsibility under the then-current Risk Register. Amounts held in the Contractor's Risk Contingency shall not include any amounts attributable to Risk Events for which the Department has assumed financial responsibility under the then-current Risk Register.

#### **D8. Allowances**

Each OPC shall allocate allowances to any Allowance Items that the Department identifies based upon its review of the then-current Design Documents. Throughout the development of each OPC, the Department and the Contractor will coordinate to review proposed Allowance Items to determine whether the Design Documents have been sufficiently refined to more precisely quantify the costs of an item categorized as an Allowance Item. Any value assigned to an Allowance Item shall be determined by the Department's Office of Estimating in consultation with the Contractor based upon the design information then available to determine the value of the corresponding Allowance Item. All other costs will be deemed to

be included in the applicable Contract Price, and will not be subject to adjustment, regardless of the final amount of the Allowance Item. The Contractor shall provide written notice to the Department upon the commencement of the Work pertaining to any Allowance Item. The Department shall authorize the Contractor to perform any Work pertaining to an Allowance Item through the issuance of a written directive. In the event the actual costs for an Allowance Item exceed the corresponding allowance under the approved Price Proposal, the Contract Price shall be adjusted accordingly by a subsequent Change Order, subject to the requirements of Section 12 (Contract Changes) and Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) of the PDBC.

#### **E. General and Administrative Expenses (G&A)**

Contractor's G&A costs shall include the gross amount of all auditable general and administrative costs and expenses that are allocated among all of the Contractor's projects (inclusive of the Project), including:

- (a) Payroll costs and other compensation of Contractor's officers, executives, principals of partnerships and sole proprietorships, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, superintendents, foremen and similar administrative personnel, that are not assigned to the Project.
- (b) Expense of the Contractor's principal and branch offices other than the Contractor's office at the Project Site.
- (c) Any part of the Contractor's capital expenses. Interest on the Contractor's capital employed for the Project (if any). Charges against the Contractor for delinquent payments on the same; and
- (d) Other overhead or general expense costs of any kind to the extent the same is auditable.

Notwithstanding any other provisions herein, and for the avoidance of doubt, Contractor's G&A costs, including specifically those G&A items listed in items (a)-(d) herein and the aggregate of all such items, shall not be characterized, considered, incorporated, or included in the Cost of the Work.

#### **6. Phase 2 Markup**

The Phase 2 Mark-Up will be applied to the applicable elements of items D1 through D8 above. Values for items of Work in the Schedule of Values and incorporated into the resource loaded CPM schedule should carry the appropriate allocation of the Phase 2 Mark-Up.

#### **7. Schedule of Values**

In conjunction with the preparation of any OPC, the Contractor shall assign the Schedule of Values to the activities in the CPM schedule. The assignment of values to scheduled activities will be reviewed by the Department in conjunction with each OPC.

Each Schedule of Values prepared in accordance with the PDBC shall also:

- (1) Be coordinated with and consistent with the draft updated Project Schedule;
- (2) Provide an estimated quantity of items to the Department for each element of Work in accordance with Department standard bid item codes whenever possible. Where Department standard bid items are not available, provide an explanation of non-standard items. The Department will provide unique item names and codes for these items.

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## **Part C: Basis for Establishing Sub-Phase 1B Price Proposal and GMP Price Proposals for Phase 2 Work**

### **1. Timelines for Preparation and Delivery of GMP Price Proposal**

Upon the Department's written agreement that an OPC can be converted into a GMP Price Proposal, the Contractor shall submit to the Department, and the Department's Office of Estimating, the Contractor's proposed GMP Price Proposal, which shall consist of the materials comprising the updated OPC as described under Section 3 below. Approximately 30 days before the formal submission of the GMP Price Proposal, the Contractor, the Department, and the Department's Office of Estimating shall meet to reconcile any questions, discrepancies or disagreements relating to the GMP Price Proposal. The reconciliation shall be memorialized by agreed upon revisions to the applicable portions of the GMP Price Proposal, which shall be approved in writing by the Department and the Contractor. The Contractor shall submit to the Department, the Contractor's proposed final GMP Price Proposal, based upon the agreed upon modifications described herein, and contingent upon the Department's approval of the corresponding Change Order incorporating the GMP Price Proposal as a GMP Contract Price.

### **2. Standards Pertaining to Development of GMP Price Proposals.** The following standards will apply to the development of GMP Price Proposals:

- (a) Each GMP Price Proposal shall allow for reasonable expected changes and refinements in the applicable Project Scope, Design Documents and the Construction Documents through completion of the Construction Documents, except for material changes in the applicable Project Scope.
- (b) Included with each GMP Price Proposal, the Contractor shall deliver to the Department one electronic/digital set of the drawings, specifications, plans, sketches, instructions, requirements, Materials, Equipment specifications and other information or documents that fully describe the Work contemplated under the corresponding GMP Price Proposal.
- (c) Each GMP Price Proposal and all supporting documents shall identify and describe all Contract Items, assumptions, costs, schedules and other matters necessary for proper execution and completion of the corresponding work. Each GMP Price Proposal and the supporting documents are complementary and in the event of an irreconcilable conflict between or among them, the interpretation that provides for the higher quality or quantity of material and/or workmanship shall prevail over all other interpretations.
- (d) The submission of any GMP Price Proposal shall be a representation on the part of the Contractor that it will provide every item, system or element of performance that is identified, shown or specified in the corresponding GMP Price Proposal or the support documents, along with those necessary or ancillary materials that are reasonably inferable and equipment for their complete operating installation, unless specifically accepted in writing by the Department. Upon the Department's written acceptance of any GMP Price Proposal, the Contractor shall not be entitled to any increase in the GMP Contract Price due to the continued refinement of the Design Documents and the Construction Documents or the absence or addition of any detail or specification that may be required in order to complete the applicable Work as described in and reasonably inferable from the GMP Price Proposal or the supporting documents used to establish the GMP Price Proposal.

- (e) Each GMP Price Proposal shall adopt and incorporate all of the terms and conditions of the PDBC and all attachments thereto. Any proposed deviation from the terms and conditions of the PDBC must be clearly and conspicuously identified to the Department in writing and specifically accepted by the Department in writing. In the event of a conflict between any term of a GMP Price Proposal that was not clearly and conspicuously identified and approved by the Department and the terms of the PDBC, the terms of the PDBC shall control.
- (f) The Department may reject any GMP Price Proposal, in which case the Department may elect to either (i) terminate the PDBC for convenience, (ii) request the Contractor to submit a subsequently revised GMP Price Proposal based upon the Department's comments, or (iii) request the Contractor to prepare subsequent Design Documents to an agreed upon design percentage.
- (g) Following the submission of any GMP Price Proposal through the execution of a Change Order, and then during the development of the final Design Documents and Construction Documents, if any member of the Contractor becomes aware of any facts that would be eligible for a Change Order and cause the GMP to exceed the applicable Contract Price, then such individual shall cause the Authorized Contractor Representative to provide prompt written notice to the Department.
- (h) Once any GMP Price Proposal is established as a GMP Contract Price through the execution of a Change Order, the GMP shall only be revised upon the issuance and execution by the Department of a Change Order in accordance with Section 12 (Contract Changes) and Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays) of the PDBC. Any GMP shall be based upon completion of the Work pursuant to the Substantial Completion Date, the Completion of the Contract Date and any other Milestone Dates established in the corresponding Change Order.
- (i) Contractor shall document the actual Cost of Work at buyout as compared to the approved GMP Price Proposal and shall report this information to the Department monthly and with Contractor's recommendation for selection of a bid/proposal for each subcontracting package.

### **3. GMP Price Proposal Components**

Each GMP Price Proposal shall incorporate the updated components of the OPC that is being converted to the corresponding GMP Price Proposal. After the Department's request for the Contractor to convert an OPC into a GMP Price Proposal, the Contractor shall update all elements of the OPC based upon the then-current versions of the: (i) applicable Project Scope, Design Documents and Construction Documents, (ii) the then-current Project Schedule or updated draft of the Project Schedule, (iii) the Risk Register, (iv) the Schedule of Values incorporated into the OPC, and (v) the breakdown of the cost of the Work comprising the Contract Price.

### **4. Review of GMP Price Proposal**

After submission of any GMP Price Proposal, the Contractor shall meet with the Department and the Department's Office of Estimating to review the updated GMP Price Proposal. In the event the Department or any of its representatives discovers any inconsistencies or

inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the GMP Price Proposal.

**5. GMP Price Proposal Acceptance**

In the event the Department notifies the Contractor of its approval of any GMP Price Proposal in writing, the Department will proceed with incorporating the approved GMP Price Proposal in the Change Order pertaining to the Phase 2 Work.

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## EXHIBIT H: FORCE ACCOUNT PROVISIONS

### 1. General

The Department may direct the Contractor to perform revised Work including Extra Work under force account. The Contractor shall submit a written proposal and estimated costs for the Work, including the planned Equipment, Materials, labor, and a work schedule.

The Department will pay the Contractor as specified in this Exhibit H as full compensation for performing the force account Work. The markups included in this Exhibit H shall be all-inclusive and the Contractor shall not be eligible to receive Phase 2 Markup for force account Work. The Contractor and the Department will document the labor and Equipment used on the force account Work on a Daily Force Account Record. At the end of each Workday, the Contractor and the Department will compare and sign the Daily Force Account Record. The Department will make no force account payment before the Contractor submits an itemized statement of the costs for the applicable force account Work.

The Department will examine and, if found to be acceptable, approve all rates and costs submitted by the Contractor.

The Contractor shall provide the following content in itemized statements for all force account Work:

- a. Name, classification, date, daily hours, total hours, rate, and amount for all labor.
- b. Designation, dates, daily hours, total hours of actual operation and idle time, Blue Book rate with reference or category, and amount for each unit of Equipment and the applicable Blue Book hourly operating cost for each unit of Equipment and invoices for all rental Equipment. The designation includes the manufacturer's name or trademark, model number, and year of manufacture.
- c. Quantities of materials and prices.
- d. Transportation charges on materials, free on board (F.O.B.) at the Project Site.
- e. Cost of workers' compensation insurance premiums, all applicable insurance premiums, unemployment insurance contributions, and social security tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which should be expressed as a cost per hour.
- f. Documentation of the following:
  - (1) For surveying or design work in accordance with Part 9 (Professional and Specialized Work) of this Exhibit H the Contractor shall provide:
    - i. Documentation for all work performed by the Designer and any Subconsultants that provided services. Documentation shall consist of records of all Actual Allowable Costs broken down as direct labor charges, indirect costs (overhead), non-salary direct costs and facilities capital cost of money. In addition, the Department will pay a profit of 12 percent of the sum of direct labor costs plus overhead. The Department will not pay an additional percent markup to the Contractor on these costs.

- ii. "Actual Allowable Costs" are incurred costs based on the cost principles and procedures set forth in Part 31 of the Federal Acquisition Regulation (Codified at 48 CFR Part 31), the State of Ohio Travel Regulations (Ohio Administrative Code Rule 126-1-02), and the AASHTO Uniform Audit and Accounting Guide, all as amended from time to time.
- (2) For all surveying, professional, or similar specialized Work not normally part of a Design-Build contract as set forth in Part 9 (Professional and Specialized Work) of this Exhibit H, the Contractor shall provide documentation showing payment to a firm hired by the Contractor.
- g. If Materials are taken from Contractor's stock and original receipted invoices for the materials and transportation charges do not exist, the Contractor shall provide an affidavit and certify all of the following:
    - (1) The Materials were taken from the Contractor's stock.
    - (2) The quantity shown was actually used for the force account Work.
    - (3) The price and transportation costs represent the actual cost to the Contractor.
  - h. Documentation showing payment to trucking firms and owner-operators. The Contractor shall submit documentation showing owner-operations status. When the trucking is subject to prevailing wage, the Contractor shall submit payroll and Equipment usage records according to Parts 1.a, 1.b, and 1.e (General) of this Exhibit H.
  - i. The Contractor shall provide "receipted invoices" for all costs substantiated by an invoice.

If only part of the expenditure represented by an invoice is applicable to force account work, or if the invoice represents expenditure for more than one item of work, clearly indicate the actual amount of expenditure applicable to each item of work.

## **2. Labor**

The Department will pay the wages and fringe benefits currently in effect for each hour the Work is performed by all labor employed in the Work and all foremen in direct charge of the specific operation. The Department will pay an additional 38 percent markup on these wages and benefits. "Fringe benefits" are the actual costs paid to, or on behalf of, workmen by reason of health and welfare benefits, pension fund benefits, or other benefits, when such amounts are required by prevailing wage laws or by a collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed on the Project.

The Department will pay the actual itemized cost, without markup, of the following payroll taxes and legally required insurances:

- a. Social Security Tax.
- b. Medicare Tax.
- c. Ohio Workers' Compensation Premiums.
- d. State and Federal Unemployment Insurance.
- e. Longshore and Harborworkers' Compensation Insurance for work from a barge or ship, or unloading material from a barge or ship.

The Contractor shall provide itemized statements in addition to the documentation requirements for all labor including the name, classification, date, daily hours, total hours, rate, and amount. If any person is paid more than the one rate, a separate listing shall be made for that person for each rate paid. The Contractor shall provide itemized statements for Ohio Workers' Compensation insurance premiums, all applicable insurance premiums, State and Federal Unemployment Insurance contributions, and Social Security Tax and fees or dues required by a collective bargaining agreement. Express each of these items of cost as a percentage of payroll, except fees or dues, which shall be expressed as a cost per hour.

Instead of itemizing the cost of Social Security Tax, Ohio Workers' Compensation, and State and Federal Unemployment Insurance, the Contractor may elect to receive as compensation for these payroll taxes and premiums, an amount equal to 22 percent of the paid wages. If the Contractor pays fringes directly to the worker in lieu of paying into a fringe benefit program, then the Department will treat these fringe payments as paid wages when calculating the allowed 22 percent compensation.

The Department will pay, without markup, the actual itemized cost of fees and dues paid to labor unions or to business associations when they are based on payroll hours and required by a collective bargaining agreement.

The Department will not pay for wages or benefits for personnel connected with the Contractor's forces above the classification of foreman that have only general supervisory responsibility for the force account Work.

If the foreman or timekeeper is employed partly on force account Work and partly on other Work, the Contractor shall prorate the number of hours between the force and non-force account Work according to the number of people on each task as shown on payrolls.

The Department will pay the prevailing wage and fringe rates that apply to the Project for the classifications required for Extra Work. The Contractor shall provide payroll records for pay rates higher than the prevailing wages and establish that the higher than prevailing rates are paid for original scope of Work excluding the force account Work (the "Original Contract Work"). The Department will pay for foremen and time keepers not covered by prevailing wages not more than the salaried rate they receive when engaged in Original Contract Work.

The Department will pay actual costs for subsistence and travel allowances when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the Project. The Department will not pay a percent markup on these costs.

### **3. Materials**

The Department will pay the Contractor's actual invoice costs, including applicable taxes and actual freight charges, for Department approved materials the Contractor uses in force account Work. The Department will pay an additional 15 percent markup on these costs.

Freight or hauling costs charged to the Contractor and not included in unit prices shall be itemized and supported by invoices. The cost of owned or rented Equipment used to haul materials to the Project Site is not part of the Materials cost. Such Equipment, when used for hauling Materials, shall be listed under cost of Equipment.

The Contractor shall provide itemized statements in addition to the documentation requirements for all Equipment including the quantity and price of each Material and transportation charges free on board (F.O.B.) at the Project Site. Attach invoices to support the quantities of Materials used, unit prices paid and transportation charges. If the Contractor uses Materials from the Contractor's stock and original receipted invoices for the Materials and transportation charges do not exist, the Department and the Contractor will agree on a price that represents the actual cost to the Contractor. Provide an affidavit and certify all of the following:

- a. The Materials were taken from the Contractor's stock.
- b. The quantity shown was actually used for the force account Work.
- c. The price and transportation costs represent the actual cost to the Contractor.

The Contractor shall not incorporate Materials into the Work without a price agreement.

#### **4. Construction Equipment**

##### **a. General**

The Department will pay the Contractor's costs for Equipment the Department deems necessary to perform the force account Work for the time directed by the Department or until the Contractor completes the force account Work, whichever happens first. The Department will pay the Contractor the established rates for Equipment only during the hours that it is operated, except as otherwise allowed elsewhere in the Contract Documents. The Department will pay for non-operating hours at the idle Equipment rate as specified in Part 4.c (Hourly Idle Equipment Rate) of this Exhibit H. The Contractor shall report Equipment hours to the nearest 1/2 hour. The established Equipment rates in this Exhibit H include compensation for overhead and profit except as otherwise specified.

The Department will pay for use of Contractor-owned Equipment the Department approves for force account Work at established rates. The Department will pay the rates, as modified in Part 4.b (Hourly Owned Equipment Rates) of this Exhibit H, given in the Equipment Watch Cost Recovery (formerly Rental Rate Blue Book), by EquipmentWatch, a division of Penton Business Media, Inc.

The Contractor shall provide, and the Department will confirm, the manufacturer's ratings and manufacturer-approved modifications required to classify Equipment for rental rate determination. For Equipment with no direct power unit, use a unit of at least the minimum recommended manufacturer's rating.

The Department will not pay rental for small tools or Equipment that show a daily rate less than \$5.00 or for unlisted Equipment that has a value of less than \$400.

Tool trucks will be allowed for compensation if they are used at the location where force account Work is performed. Only the tools used from the tool truck will be allowed for compensation. Tools in the tool truck that are not used in the force account Work will not be compensated. A tool trailer that remains at the Contractor's office or yard will not be compensated under force account Work. Tool trailers that are taken to the location where the force account Work is performed will be allowed for compensation along with the tools used on the force account Work that were taken from the trailer.

Traffic control devices used in Maintenance of Traffic and owned by the Contractor shall be considered as owned Equipment. Allowed rates for common traffic control devices and concrete barrier that are not listed in the Blue Book will be as determined by the Department.

The Contractor shall use Department-approved Equipment in good working condition and providing normal output or production. The Department may reject Equipment not in good working condition or not properly sized for efficient performance of the Work.

For each piece of Equipment used, whether owned or rented, provide the Department with the following information:

- (1) Manufacturer's name or trademark.
- (2) Equipment type.
- (3) Year of manufacture.
- (4) Model number.
- (5) Type of fuel used.
- (6) Horsepower rating.
- (7) Attachments required, together with their size or capacity.
- (8) All further information necessary to determine the proper rate.
- (9) Dates, daily hours, total hours of actual operation and idle time.
- (10) Blue Book rate with reference or category.
- (11) Amount.
- (12) Applicable Blue Book hourly operating cost.
- (13) Invoices for all rental Equipment.

**b. Hourly Owned Equipment Rates**

The base rate for the machine and attachments represents the major cost of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs. The hourly operating rate represents the major costs of Equipment operation, such as fuel and oil lubrication, field repairs, tires, expendable parts, and supplies.

For all Equipment used on force account Work, determine, and have the Department confirm, the hourly owned Equipment rates as follows:

$$\text{HOER} = [\text{RAF} \times \text{ARA} \times (\text{R} / 176)] + \text{HOC}$$

Where:

- HOER = Hourly owned Equipment rate
- RAF = Regional adjustment factor shown in the Blue Book
- ARA = Age rate adjustment factor shown in the Blue Book
- R = Current Blue Book monthly rate
- HOC = Estimated hourly operating cost shown in the Blue Book

However, compensation for Equipment normally used on a 24 hours per day basis will not exceed the monthly rate plus adjustments and operating costs.



The rate adjustment factor assigned to any attachment will be the yearly factor as determined for the base Equipment.

When multiple attachments are included with the rental Equipment, only the attachment having the highest rental rate will be eligible for payment, provided that the attachment has been approved by the Department as being necessary to the force account Work.

When a piece of owned Equipment is not listed in the Blue Book, use the rate for similar Equipment found in the Blue Book or, if no similar Equipment is listed, use 6 percent of the purchase price as the monthly rate (*R*) and add the hourly operating rate found in the Blue Book for similar Equipment of the same horsepower.

For Equipment brought to the Project Site exclusively for force account Work and on the Project Site for less than a month, multiply the monthly rate (*R*) by the factor listed in Table H-1 below:

**TABLE H-1**

<i>Working Hours</i>	<i>Factor</i>
Less than or equal to 8.0	2.00
8.1 to 175.9	2.048 - (hours/168)
176 or greater	1.00

The term “Working Hours,” as used in Table H-1, includes only those hours the Equipment is actually in operation performing force account Work; apply the factor, as determined above, to these actual working hours only. Calculate compensation for any idle time according to Part 4.c (Hourly Idle Equipment Rate) of this Exhibit H without application of the factor.

The Department will pay as working Equipment for the entire Workday, Equipment used intermittently during the Workday. The following criteria qualify for intermittently used Equipment:

- (1) Equipment dedicated to the force account Work exclusively all day and not used on other Work.
- (2) Equipment works before and after the intermittent idle period and its total working time during the Workday is at least two hours.

Equipment that is captive to the force account Work (i.e. it must remain at the location of the force account Work), but does not qualify for intermittently used owned Equipment, is paid as idle Equipment according to Part 4.c (Hourly Idle Equipment Rate) of this Exhibit H for the time it is not working.

**c. Hourly Idle Equipment Rate**

For Equipment that is in operational condition, on the Project Site, and necessary for force account Work, but is idle, the Department will pay an hourly idle Equipment rate. The procedure to determine the hourly idle Equipment rate for Contractor owned Equipment is as follows:

$$\text{HIER} = \text{RAF} \times \text{ARA} \times (\text{R} / 176) \times (1/2)$$

Where:

- HIER = Hourly idle Equipment rate.
- RAF = Regional adjustment factor shown in the Blue Book.
- ARA = Age rate adjustment factor shown in the Blue Book.
- R = Current Blue Book monthly rate.

If rented Equipment necessary for force account Work is idle, the Department will pay the Contractor for the actual invoiced rates prorated for the duration of the idle period. The actual invoiced rates must be reasonably in line with the Blue Book rates and approved by the Department. The Department will pay a 15 percent markup for overhead and profit for the actual invoiced rates during the idle period.

The Department will not pay idle owned Equipment costs for more than eight hours in a 24-hour day or 40 hours in a week.

The Department will not pay for inoperable Equipment.

The Department may order specific Equipment to the Project Site up to five Days before its planned usage. If this Equipment is not used for other Work, the Department will pay for it as idle Equipment until used.

The Department will pay for the cost of idle owned or rented Equipment if the force account Work is suspended at the Department's direction. The Department will not pay the cost of idle Equipment if the force account Work is suspended by the Contractor for the Contractor's own reasons.

The Department will only pay for the number of Calendar Days during the existence of a Department-directed force account Work suspension. The Department will not compensate the Contractor for days during a Department-instructed suspension of the force account work that the Department determined were lost to weather.

The Department will only pay for Equipment physically located at the Project Site that was received to prosecute the scheduled Work during the period of a Department-instructed suspension of the force account Work.

Compensation for idle Equipment will stop at the completion of the force account Work or at the end of the suspension of the force account Work.

#### **d. Rented Equipment**

The Department will pay a 15 percent markup for overhead and profit for all rented Equipment, its corresponding Blue Book hourly operating costs, and State and Local sales taxes.

##### **(1) Equipment Rented Solely for Force Account Work**

If the Contractor rents or leases Equipment from a third party exclusively for force account Work, the Department will pay the actual invoiced amount. The actual invoiced rates must be reasonably in line with the Blue Book and approved by the Department. The Department will pay a 15 percent markup for overhead and profit for all rented

Equipment paid for by the actual invoices. Add the Blue Book hourly operating cost to the marked up actual invoiced rates.

(2) Equipment Rented for Original Contract Work, but Used for Force Account Work

If the Contractor uses rented Equipment currently on the Project Site for Original Contract Work to perform force account Work, then determine the hourly outside-rented Equipment rate as follows:

$$\text{HRER} = (\text{HRI} \times 115\%) + \text{HOC}$$

Where:

- HRER = hourly rented Equipment rate.
- HRI = hourly rental invoice costs prorated for the actual number of hours that rented Equipment is operated solely on force account Work. Use a monthly invoice rate divided by 176, a weekly invoice rate divided by 40, or a daily invoice rate divided by 8.
- HOC = hourly operating cost shown in the Blue Book.

The Department will not compensate for rental rates that exceed the Blue Book rates unless approved in advance of the Work by the Department.

**e. Moving of Equipment**

The Department will also pay for the time required to move needed Equipment to the location of the force account Work and to return it to its original location. The Department will pay for loading and transportation costs instead of moving time if Equipment is moved by means other than its own power. Moving time back to the original location or loading and transportation costs will not be allowed if the Equipment is used at the location of the force account Work on contract items or related Work.

The Department will consider the actual cost of transferring the Equipment to the Project Site and returning it to the original location as an additional expense and pay for it as specified, for Equipment moved on the Project Site exclusively for force account Work.

The Department will confirm the original location of the Equipment before the Contractor moves and uses it for force account Work.

If the Equipment is transported by a common carrier, the allowance is the invoiced amount paid for the freight plus 15 percent. However, if the Contractor's forces transport the Equipment, the allowable compensation will be Blue Book rate of the hauling unit and hourly Blue Book operating cost plus the driver's wages and the cost of loading and unloading the Equipment calculated according to Part 2 (Labor) of this Exhibit H.

**5. Foreman's Transportation**

The Department will pay the Blue Book rate for every hour the foreman's truck is at the location of the force account Work or moving to or from the Project Site. This rate includes Equipment cost, fuel and lubricants, overhead, profit, and mobile phone or two-way radios.

## 6. Subcontract Work

For Work performed by an approved Subcontractor, the Department will pay an amount to cover administrative costs of 8 percent on the first \$10,000 of Work and 5 percent for Work in excess of \$10,000 as provided in Part 2 (Labor) of this Exhibit H through Part 5 (Foreman's Transportation) of this Exhibit H. No additional mark-up is allowed for Work of a sub-contractor or trucking services employed by a Subcontractor.

## 7. Final Adjustment to Premium for Contract Bonds

Not Used.

## 8. Trucking

- a. Trucking firms and owner operators not subject to prevailing wage will be paid at the invoiced cost plus 8 percent on the first \$10,000 of trucking and 5 percent for trucking in excess of \$10,000 to cover administrative costs.
- b. Trucking that is subject to the prevailing wage law will be compensated according to the following parts of this Exhibit H: Part 1 (General), Part 2 (Labor), Part 4 (Construction Equipment), Part 6 (Subcontract Work), and Part 10 (Payment for Force Account Work).

The Contractor shall provide documentation showing payment to trucking firms and owner-operators and owner-operations status. When the trucking is subject to prevailing wage, the Contractor shall submit payroll and Equipment usage records according to Part 2 (Labor) of this Exhibit H and Part 4 (Construction Equipment) of this Exhibit H.

## 9. Professional and Specialized Work

Professional and specialized Work will be paid for according to the following:

- a. The following Work, when performed by the Designer or its subconsultants, is paid as set forth in Part 1.f (General) of this Exhibit H.
  - (1) Design costs.
  - (2) Surveying costs.
- b. The following Work, when performed by a firm other than the Designer or its subconsultants, is paid at the reasonable and fair market invoiced cost plus a 5 percent markup. The markup is limited to \$10,000 for all the Work performed by the firm.
  - (1) Specialized Work that is not part of the Original Contract Work and is not normally subject to prevailing wage.
  - (2) Installation, periodic maintenance, and removal of traffic control devices under ODOT C&MS Item 614 performed by a traffic control service or rental company, provided the workers are not on the Project Site full-time. Maintenance of Traffic services performed by LEO.
  - (3) Other professional or specialized Work not contemplated at the time of submittal of a Work Package Proposal.

The Contractor shall provide documentation showing payment for professional and specialized Work.

## 10. Payment for Force Account Work

The Contractor shall submit an analysis of estimated cost prepared in accordance with this Exhibit H for force account Work. Attach an original affidavit to the analysis stating:

*“Labor rates shown are the actual rates paid for labor, unit prices for Materials and rates for owned and rented Equipment have been estimated on the basis they are not in excess of those charged in the area in which the Work will be performed.”*

The Department will process an Estimated Cost of Force Account (ECFA) if the amount of the force account Work is likely to be greater than \$100,000 and is expected to take more than two weeks to complete. The Department will process an Actual Cost of Force Account (ACFA) to make any necessary adjustment between the ECFA and the final itemized costs for the force account Work.

For force account Work estimated to be less than \$100,000 and anticipated to require less than two weeks to perform, the Department will process an Actual Cost of Force Account (ACFA) at the conclusion of the Work.

The Contractor shall submit biweekly itemized statement of costs prepared from the Daily Force Account Records to the Department as the Work is being performed. The Department will process estimates as the force account Work is performed. Payment will only be made upon receipt of the Contractor’s itemized statement of costs.

Upon conclusion of the Work performed by an ECFA or Work performed by an ACFA the Contractor shall submit an itemized statement of the actual costs prepared from the Daily Force Account Record and utilizing the Department’s electronic template titled “Electronic Force Account.” Submit a compact disk (CD), labeled with the Contractor’s name and the project number, and a hard copy of the “Electronic Force Account.” The “Electronic Force Account” template can be downloaded from the following website:

[www.dot.state.oh.us/divisions/constructionmgt/admin/pages/default.aspx](http://www.dot.state.oh.us/divisions/constructionmgt/admin/pages/default.aspx)

The Department may approve an alternative electronic template provided all calculations and printouts are equivalent to those generated by the “Electronic Force Account” template.

The Contractor shall attach an original affidavit to the hard copy stating:

*“The name, classification, total hours worked and rates paid each person listed on the Summary of Actual Cost are substantiated by actual records of persons employed on the force account work. All unit prices for Materials and rates for owned and rented Equipment listed on the Summary of Actual Costs are substantiated by actual records of Materials and Equipment actually used in performance of the force account Work and the price of any owned Equipment not previously agreed upon does not exceed prices charged for similar Equipment in the area in which the Work was performed.”*

Daily Force Account Records signed by both the Department and Contractor will govern over other Department and Contractor records subject to the following:

- a. When the Contractor is subject to a Union Contract that requires a minimum number of paid hours, the compensation will be for the verified contract minimum hours.

- b. Material quantity disagreements will be resolved by field measurements of the installed quantities or the Department's estimate of the amount of temporary or un-measurable Material used. The Department may also review and consider the Contractor's Material invoices and Material certifications to make the final determination.

In the event the Contractor declines to sign the Daily Force Account Record, the Department's records shall govern. Any resulting dispute must be pursued in accordance with PDBC Section 18 (Partnering and Dispute Resolution).

DRAFT 1-5-2024

## EXHIBIT I: DELAY COSTS

### 1. General

If the Department agrees that it has caused a delay, the Department will pay for the costs specified in this Exhibit I as allowed by PDBC Section 13 (Time Extension to the Completion Deadlines and Payment for Excusable Delays), unless these costs have been previously paid as listed in PDBC Section 12.8.1 (Negotiated Prices) or Exhibit H (Force Account Provisions). Such payment constitutes full compensation for any and all delay costs.

The Department will make no payment for delays occurring during the period from December 1 to April 30 unless the Contractor's approved progress schedule depicts Work on the Critical Path occurring throughout this period.

The Department will not pay for delay costs until the Contractor submits an itemized statement of those costs. Provide the content specified in Exhibit H (Force Account Provisions), for the applicable items in this statement and as follows:

- a. Proof of cost of superintendent, or other project staff salaries, wages, and payroll taxes and insurance.
- b. Proof of cost of office rent, utilities, land rent, and office supplies.
- c. Proof of escalated cost for labor and Material.
- d. Proof of Material storage costs.

### 2. Allowable Delay Costs

- a. Extended Labor

The Contractor shall compute labor costs during delays as specified in Part 2 (Labor) of Exhibit H for all non-salaried personnel remaining on the Project as required under collective bargaining agreements or for other Department-approved reasons.

- b. Escalated Labor

To receive payment for escalated labor costs, demonstrate that the Department-caused delay forced the Work to be performed during a period when labor costs were higher than planned at the time of Submittal of each Work Package Proposal. Provide adequate support documentation for the costs, allowances, and benefits specified in Part 2 (Labor) of Exhibit H. The Department will pay wages and fringes with a 20 percent mark-up to cover administrative costs.

- c. Idle Equipment or Equipment Demobilization

The Department will pay the Contractor according to Part 4.c (Hourly Idle Equipment Rate) of Exhibit H for idle Equipment, other than small tools, that must remain on the Project during the delays. The Department will pay the Contractor's transportation costs to remove and return Equipment not required on the Project during the delays. No other Equipment costs are recoverable as a result of delay.

d. Material Escalation or Material Storage

The Department will pay the Contractor for increased Material costs or material storage costs due to the delay. Obtain the Department's approval before storing Materials due to a delay. Payment will be based upon the accepted quantity of Work performed during the period for which escalated costs have been approved. The Department will pay increased Material costs with an 8 percent mark-up to cover administrative costs and any Material waste inherent to the Work.

e. Field Overhead

The Department will pay field overhead costs for the Contractor or any Subcontractor which include the cost of supervision, field office and office supplies, and utilities for which payment is not provided for in Part 2.f (Home Office Overhead) of this Exhibit I, during a delay period provided all of the following criteria are met:

- (1) The Contractor has incurred an excusable, compensable delay that delays the Work at least 10 Days beyond the original Completion Date. These days are cumulative throughout the Term.
- (2) The delay for which payment of field overhead is sought is due to delays defined in the following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - 2. (Delays due to utility interference);
  - 3. (Delays due to railroad interference);
  - 4. (Delays due to a Department-ordered suspension); and
  - 9. (Delays due to the neglect of the Department or its failure to act in a timely manner).
- (3) The delay for which payment of field overhead is sought is due to delays due to revised Work as specified in PDBC Section 12 (Contract Changes).

The Department will pay the salary and fringes plus a 5 percent markup for the field personnel included as part of the Contract Price build-up that are on the Project Site during the delay period.

Superintendent's transportation is compensable at the same rate allowed for foreman's transportation in Part 5 (Foreman's Transportation) of Exhibit H, which includes the cost of mobile communication devices. The allowed hours are when the superintendent is at the Project Site.

Superintendent's subsistence is compensable, provided this is the company's terms of compensation to such employees, as documented by the Contractor's written company policy or contracts with their employees.

The Contractor's or Subcontractor's field office costs include field office trailers, tool trailers, office Equipment rental, temporary toilets, and other incidental facilities and supplies. The Contractor shall compute these costs on a Day basis. Owned trailers are paid at the Blue Book rate. Rented trailers are paid at the invoiced cost plus a 15 percent markup. Rented office space, toilets, and office Equipment are allowed a 5 percent markup. Purchased office supplies are allowed a 5 percent markup.



Office utilities include, but are not limited to, telephone, electric, water, and natural gas. Compute these costs on a Day basis and allow a 5 percent markup.

f. Home Office Overhead

The Department will pay the Contractor for home office overhead, unabsorbed home office overhead, extended home office overhead, and all other overhead costs for which payment is not provided for in Part e (Field Overhead) of this Exhibit I, including overhead costs that would otherwise be calculated using the Eichleay formula or some other apportionment formula, provided all of the following criteria are met:

- (1) The Contractor has incurred an excusable, compensable delay that delays the Work at least 10 Days beyond the original Completion Deadline. These days are cumulative throughout the Project.
- (2) The delay for which payment of home office overhead is sought is only due to delays defined in the following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - 2. (Delays due to utility interference);
  - 3. (Delays due to railroad interference);
  - 4. (Delays due to a Department-ordered suspension); and
  - 9. (Delays due to the neglect of the Department or its failure to act in a timely manner).

Any Subcontractor that has approved C-92's for subcontracted work totaling \$10,000,000 or more is eligible for reimbursement of home office overhead provided the criteria set forth in Part f, sub-parts (1) and (2) (Home Office Overhead) of this Exhibit I are met.

Payment will be made for every eligible day beyond the original Completion Date at the rate determined by Part f, sub-part (i) (Home Office Overhead Daily Rate) of this Exhibit I.

Payment for eligible days occurring during an unanticipated construction period will be calculated in accordance with this Part f, sub-part (ii) (Home Office Overhead Payment for an Unanticipated Construction Period) of this Exhibit I.

Payment for eligible days occurring during an unanticipated winter period will be calculated in accordance with this Part f, sub-part (iii) (Home Office Overhead Payment for an Unanticipated Winter Period) of this Exhibit I.

(i) Home Office Overhead Daily Rate

Calculate the home office overhead daily rate using the following formula:

$$\text{Daily HOOP} = (A \times C)/B$$

Where:

- A = Original Contract Price
- B = Contract duration in Days

- $C = 0.03$
- Daily HOOP = Home office overhead daily rate

Contract duration term, B, includes every Day from the execution of the Phase 2 Change Order, to the original Contract Completion Date.

When the Contractor requests home office overhead compensation for a Subcontractor, use the above formula to calculate the Subcontractor's Daily HOOP; however, in the Subcontractor calculation, A is equal to the Subcontractor's portion of the original Contract Price as determined by the sum of all approved C-92's issued for the subcontracted Work.

For the contract values/durations (A and B of the Daily HOOP calculation) the Department will be taking a cumulative approach, the original change order values for Sub-Phase 1B and the established durations will be utilized. Once the Phase 2 change order is issued, the GMP and associated durations will be utilized.

(ii) Home Office Overhead Payment for an Unanticipated Construction Period

Calculate the home office overhead payment for an unanticipated construction period occurring between May 1 and November 30 using the following formula:

$$\text{CP HOOP} = \text{Daily HOOP} \times D$$

Where:

- D = Sum of all excusable, compensable delays in Days minus the sum (in Days) of all delays due to following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - 1. (Delays due to Revised Work); and
  - 8. (Delays due to acts of the government or political subdivisions other than the Department).
- Daily HOOP = Daily home office overhead rate.
- CP HOOP = Home office overhead payment for an unanticipated construction period occurring between May 1 and November 30.

The excusable, compensable delay term, D, is the additional, unanticipated extended period for Work performed between May 1 and November 30 in Days.

(iii) Home Office Overhead Payment for an Unanticipated Winter Period

The Contractor shall calculate the payment for home office overhead for an unanticipated winter period occurring between December 1 and April 30 using the following formula:

$$\text{WP HOOP} = \text{Daily HOOP} \times F \times D/E$$

Where:

- D = Sum of all excusable, compensable delays in Days minus the sum (in Days) of all delays due to following numbered subsections of PDBC Section 13.2.2 (Category 2 Events – Excusable, Compensable Delays):
  - 1. (Delays due to Revised Work); and
  - 8. (Delays due to acts of the government or political subdivisions other than the Department).
- E = Sum of all excusable, compensable delays in Days plus the sum of all excusable, non-compensable delays in Days.
- F = 151 for a non-leap year or 152 for a leap year.
- Daily HOOP = Daily home office overhead rate.
- WP HOOP = Home office overhead payment for an unanticipated winter period occurring between December 1 and April 30.

Payment for Home Office Overhead for an unanticipated winter period will not be made when the value of the remaining Work is below the lesser of \$500,000.00 or 10 percent of the estimated final Contract Price.

(iv) Total Home Office Overhead Payment

The Contractor shall calculate the total home office overhead payment using the following formula:

$$\text{Total HOOP} = \text{CP HOOP} + \text{WP HOOP}$$

Where:

- CP HOOP = Home office overhead payment for an unanticipated construction period occurring between May 1 and November 30
- WP HOOP = Home office overhead payment for an unanticipated winter period occurring between December 1 and April 30
- Total HOOP = Total home office overhead payment

g. Subsistence and Travel Allowance

The Department will pay costs for subsistence and travel allowances for labor that must remain on the Project Site during the delays, when such payments are required by the collective bargaining agreement or other employment contracts applicable to the classes of labor employed on the project. Overnight lodging will be reimbursed if the person is at a location greater than forty-five miles from their residence up to a maximum of \$106 per day. Meals and incidental expenses will be reimbursed up to a maximum of \$56 per day. The Department will not pay a percent markup on these costs.

## EXHIBIT J: UNIT PRICING PROVISIONS

### 1. General

The provisions in this Exhibit J shall apply to any Contract Items in a Work Package that are to be compensated under unit prices.

For items in a Work Package with unit prices (if any), the Department will measure the quantities of Work and calculate payments based on the method of measurement and basis of payment provisions provided in the ODOT C&MS. When the following units of measure are specified, the Department will measure quantities as described below unless otherwise specified in the Contract Documents. The accuracy of individual pay item Estimate payments will be one decimal more accurate than the unit of measure denoted for the pay item.

The Department will monitor the quantities of Work and may verify invoice requests based on the method of measurement and basis of payment provisions provided in these Specifications. When the following units of measure are specified, the Department will monitor quantities as described below in Ohio unless otherwise specified in the Contract Documents.

**Lump Sum.** Not measured. Describes payment as reimbursement for all resources necessary to complete the Work. When a complete structure or structural unit is specified as the unit of measurement, the unit will include all necessary fittings and accessories.

**Each.** Measured by the number of individual items of Work completed.

**Foot (Meter).** Measured parallel to the longitudinal base or foundation upon which items are placed, or along the longitudinal surface of the item. Measured vertically to the nearest 0.1 foot (0.01 m), with a minimum vertical measurement of 1 foot (0.10 m), at each unit.

**Square Yard or Square Foot (Square Meter).** Measured by a two-dimensional area method on the surface of the item.

**M Square Feet.** One thousand square feet.

**Cubic Yard (Cubic Meter).** Measured by a three-dimensional volume method. Measure all "loose material" or material "measured in the vehicle" by the cubic yard (cubic meter). Haul material "measured in the vehicle" in approved vehicles and measure in the vehicle at the point of delivery. For this purpose, use approved vehicles of any type or size satisfactory to the Department, provided the vehicle's bed is of such type that the actual contents are readily and accurately determined. Unless all approved vehicles on a job are of uniform capacity, each approved vehicle must bear a legible identification mark indicating the specific approved capacity. The Inspector may reject all loads not hauled in such approved vehicles.

**Cubic Yard (Cubic Meter)** for Asphalt Concrete. Measure as specified in C&MS 401.21.

**Acre (Hectare).** Measured by a two-dimensional area method on the surface to the nearest 0.1 acre (0.05 ha).

**Pound (Kilogram).** Measured by actual item net weight avoirdupois (mass).

**Ton (Metric Ton).** The term "ton" means the short ton consisting of 2000 pounds avoirdupois. The term "metric ton" means 1000 kilograms. Weigh all materials that are proportioned by

weight on accurate and approved scales that are operated by competent, qualified personnel at locations approved by the Department. However, car weights will not be acceptable for Materials to be passed through mixing plants. If trucks are used to haul Material being paid for by weight, weigh the empty truck at least once daily and as the Department directs and only if the weight of the truck is used in determining the ticket weight. Place a plainly legible identification mark on each truck bearing the weight of the truck.

For Work on a tonnage basis, file with the Department receipted freight bills for railroad shipments and certified weight-bills when Materials are received by any other method, showing the actual tonnage used. For Work on a volume basis, itemize evidence of the volume used.

**Gallon (Liter).** Measured by actual item liquid volume. The Department will measure the following materials by the gallon (liter) at the following temperatures:

<i>Temperatures</i>	<i>Items</i>
60 °F (16 °C)	Creosote for Priming Coat, Creosote Oil, Creosote Solutions for Timber Preservatives, Asphalt Primer for Water-proofing, and Liquefier
100 °F (38 °C)	RC, MC Asphalt Emulsions, CBAE, Primer 20, and Primer 100
300 °F (149 °C)	Asphalt Binder

Measure tank car outage of asphalt material at its destination before any material has been removed from the tank car according to Supplement 1060.

Convert the net weight of asphalt material shipments to gallons (liters) at the specified pay temperature according to Supplement 1060.

Convert the gallons (liters) at the measured temperature to gallons (liters) of asphalt material at the specified pay temperature according to Supplement 1060.

**M Gallon.** One thousand gallons.

**Thousand Board Feet, MBF (Cubic Meter).** Measure timber by MBF (cubic meter) actually incorporated in the structure. Base the measurement on nominal widths, thicknesses, and the extreme length of each piece.

**Standard Manufactured Items.** When standard manufactured items are specified such as fence, wire, plates, rolled shapes, pipe conduit, etc., and these items are identified by size, unit weight, section dimensions, etc., such identification will be to nominal weights or dimensions set by the industry.

**2. Significant Changes in the Character of the Work (Unit Priced Items)**

For Work that is priced using unit priced Contract Items, the Department may increase or decrease unit priced item quantities and may alter the Work as necessary to complete the Project. The Department will make appropriate adjustments according to PDBC Section 12.7.2 (Significant Change in the Character of the Work) if such alterations significantly change the character of the Work.

If the Contractor disagrees as to whether an alteration constitutes a significant change, the Contractor shall use the notification procedures specified in PDBC Section 18 (Partnering and Dispute Resolution).

For unit priced items the term “significant change” is defined as follows:

1. When the character of the Work as altered differs materially in kind or nature from that involved or included in the Contract Documents; or
2. When the product of the quantity in excess of the estimated quantity of a unit priced Contract Item and the unit price exceeds \$100,000.

A quantity underrun is defined as follows:

- a. The estimated quantity of a unit priced Contract Item exceeds four units;
- b. The decrease in quantity of any unit priced Contract Item exceeds 25 percent of the estimated quantity; and
- c. The total of all such adjustments for all unit priced Contract Items is more than \$400.

After the determination of final quantities for unit priced Contract Items, the Department will adjust the unit prices for the affected unit priced Contract Item by multiplying the unit price by the factor obtained from Table J-1.

**TABLE J-1**

<b>% Decrease</b>	<b>Factor</b>	<b>% Decrease</b>	<b>Factor</b>
25	1.08	57	1.33
26 to 27	1.09	58	1.35
28 to 29	1.10	59	1.36
30 to 31	1.11	60	1.38
32 to 33	1.12	61	1.39
34 to 35	1.13	62	1.41
36	1.14	63	1.43
37 to 38	1.15	64	1.44
39	1.16	65	1.46
40 to 41	1.17	66	1.49
42	1.18	67	1.51
43	1.19	68	1.53
44 to 45	1.20	69	1.56
46	1.21	70	1.58

<b>% Decrease</b>	<b>Factor</b>	<b>% Decrease</b>	<b>Factor</b>
47	1.22	71	1.61
48	1.23	72	1.64
49	1.24	73	1.68
50	1.25	74	1.71
51	1.26	75	1.75
52	1.27	76	1.79
53	1.28	77	1.84
54	1.29	78	1.89
55	1.31	79	1.94
56	1.32	80 and over	2.00

When a change does not qualify as a significant change or a quantity underrun, the change is considered a minor change. The Department will pay for minor changes in the Work at the applicable unit price for the Contract Item. Table J-1 is not applicable to Lump Sum Contract Items.

### **3. Eliminated Items**

The Department may partially or completely eliminate Contract Items, or may eliminate portions of the Work described in the Base Design.

The Department will only make an adjustment to compensate the Contractor for the reasonable cost incurred in preparation to perform significantly changed Work according to the provisions in this Exhibit J for significant changes in the character of the Work as defined in Part 2 (Significant Changes in the Character of the Work (Unit Priced Items)) or Work completely eliminated prior to the date of the Department's written order to significantly change or completely eliminate the Work. The adjustment will be determined according to the provisions in this Exhibit J under the provisions of Part 4 (Compensation for Altered Quantities) and PDBC Section 12 (Contract Changes). Such payment will not exceed the price of the Contract Item.

The Department will not seek a savings for maintaining traffic, Mobilization, and construction layout stakes items for eliminated Contract Items, unless there is a significant change.

### **4. Compensation for Altered Quantities**

If the quantities of unit priced items vary from the quantities in the Contract, the Department will make payment at the original Contract unit prices for the agreed quantities of Work.

- A. If a portion of the Work is eliminated in accordance with Part 3 (Eliminated Items) or the contract is terminated in accordance with PDBC Section 21 (Termination for Convenience) the Department will pay the following in addition to that provided by Part 2 (Significant Changes in the Character of the Work (Unit Priced Items)):

1. Restocking charges supported by paid invoices and an additional 5 percent markup on the compensation for overhead and profit.
2. The cost of Material transferred to the Department or a local government agency in lieu of restocking or disposal. The allowed compensation is the paid invoice cost plus 15 percent markup, but no more than the unit bid price for the reference number involved.
3. Hauling costs, if not included in restocking charges, for returned Material and for Material delivered to the Department.

DRAFT 1-5-2024



## **EXHIBIT K: FORM OF PAYMENT AND PERFORMANCE BONDS**

DRAFT 1-5-2024

**CONTRACT PERFORMANCE BOND**  
(5525.16)

**KNOW ALL MEN BY THE PRESENTS:**

**THAT WE** (1) \_\_\_\_\_

\_\_\_\_\_ as principal (the "Principal" or "Contractor"), (2) \_\_\_\_\_

\_\_\_\_\_ ("Co-Surety"), (3) \_\_\_\_\_ ("Co-

Surety"), and (4) \_\_\_\_\_ ("Co-Surety"), each authorized to

do business in the State of Ohio, \_\_\_\_\_

\_\_\_\_\_ in the penal sum of \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_), as the same may be adjusted from time to time in accordance

with any executed Performance Bond Rider, for the payment of which, well and truly to be made, we hereby jointly

and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

**THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:**

**WHEREAS**, said Principal has heretofore filed with the Director of Transportation of the State of Ohio, a written proposal for the design construction and completion of

- JEF-SR7-25.67 Mine Subsidence | PID 110873 (the Project)

**WHEREAS**, said Director of Transportation has accepted said proposal and has awarded to said Principal a Progressive-Design Build Contract pertaining to the design, construction and completion of the Project duly executed and delivered as of \_\_\_\_\_, 2023, as the same may be supplemented, modified, amended, or amended and restated (the "Contract"), on the terms and conditions set forth therein; and

**WHEREAS**, upon award of the Contract, Principal is required to furnish a performance bond (this "Bond") guaranteeing the faithful performance of its obligations under the Contract and the other Contract Documents (as defined in the Contract).

**NOW, THEREFORE**, Principal and Co-Sureties are duly licensed or authorized in the State of Ohio, are held and firmly bounded unto the Ohio Department of Transportation ("Obligee") in the initial amount of Four Hundred Thousand and 00/100 (\$400,000.00), subject to adjustment in accordance with one or more validly executed Performance Bond Rider(s) in the form attached hereto (collectively the "Bonded Sum"), for payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

**NOW, THEREFORE, FURTHER AGREED**, if the said Principal shall well, truly and faithfully comply with and perform each and all of the terms, covenants and conditions of such Contract and the other Contract Documents on its part to be kept and performed, according to the tenor thereof, and within the time prescribed and will perform the Work embraced therein upon the terms proposed and within the time prescribed and in accordance with the Contract, the other Contract Documents, Plans, Specifications and estimates furnished therefor, to which reference is here made, the same being a part hereof, as if fully incorporated herein, and will fully indemnify the State against any damage that may result from any failure of the Contractor to so perform, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder shall, except as expressly provided and set forth in ORC 5525.17, not exceed the penal amount of this obligation, as herein stated as the same may be adjusted from time to time in accordance with any Performance Bond Rider. It is further expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder is governed by Ohio Revised Code (i) Section 5525.16, except as to the Principal's indemnification of any railroad company against any damage that may result by reason of the negligence of the Principal in making the improvement in the case of a railroad at grade separation as the scope of the Project does not include such railroad at grade separation, thus the Principal's indemnification shall not be required hereunder, and (ii) 5525.17, and nothing other than the foregoing limitation stated herein shall operate as a limitation upon the joint and several obligations of the Co-Sureties under that statute or any other provision under Ohio law.

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

1. Notwithstanding the provisions above, the amount of this Bond may be increased or decreased by the amount specified in a fully completed and executed Performance Bond Rider.
2. The Co-Sureties hereby agree to empower a single representative, who shall be an employee or agent of the Lead Surety if a Lead Surety is elected as described in Section 19.1.5 (Liability of Contractor and Surety/Occurrence of a Contractor Breach) of the PDBC, with the authority to act on behalf of all Co-Sureties with respect to this Bond, so that the Obligee and claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. Each of the other Co-Sureties hereby acknowledge and agree that the foregoing designation shall constitute a waiver of each Co-Surety' rights under this Bond or applicable law to receive any notices with respect to this Bond or to undertake any portion of the Work after a Contractor Default. The initial representative shall be \_\_\_\_\_ and all correspondence or claims relating to this Bond should be sent to the Surety at the following address:

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

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

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

Any capitalized terms used and not expressly defined herein shall be given the meaning assigned to them in the Contract.

The said Co-Sureties hereby stipulate and agree that any failure to complete Work at the times set forth in the Contract, or extensions of time for completion, or modifications, omissions or additions in or to the terms of said Contract, or in or to the other Contract Documents shall not in any way affect the obligation of said Co-Sureties on their bond. It is expressly acknowledged and agreed by the Co-Sureties the Principal the Oblige and their respective heirs, executors, administrators, successors and assigns that the listed amount under this Bond is for Sub-Phases 1A and 1B of the Contract and that the Bonded Sum under this Bond shall increase to meet the full entirety of the Contract Price as the Contract is amended pursuant to one or more Change Orders.

***[Remainder of the Page Left Intentionally Blank. Signature Page to Follow]***

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

In presence of (MUST BE WITNESSED)

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Witness to Attorney-in-fact

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Name of Surety Company (2)

\_\_\_\_\_  
Address of Surety Company (2)

\_\_\_\_\_  
Signature of Attorney-in-fact

\_\_\_\_\_  
Company of Attorney-in-fact

\_\_\_\_\_  
Address of Attorney-in-fact (include phone #)

\_\_\_\_\_  
Sureties

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Name of Surety Company (1)

\_\_\_\_\_  
Address of Surety Company (1)

\_\_\_\_\_  
Signature of Attorney-in-fact

\_\_\_\_\_  
Company of Attorney-in-fact

\_\_\_\_\_  
Address of Attorney-in-fact (include phone #)

\_\_\_\_\_  
Sureties

\_\_\_\_\_  
Name of Surety Company (3)

\_\_\_\_\_  
Address of Surety Company (3)

\_\_\_\_\_  
Signature of Attorney-in-fact

\_\_\_\_\_  
Company of Attorney-in-fact

\_\_\_\_\_  
Address of Attorney-in-fact (include phone #)

\_\_\_\_\_  
Sureties

## INSTRUCTIONS

Attach corporate seal of Principal if corporation.

Attach corporate seal if each surety company signing as surety.

(1) If a corporation, insert on page 3, "A corporation organized under the laws of the State of (Name of State) with its principal place of business at (Address)."

(2) If a surety company, insert on page 3, "A corporation organized under the laws of the State of (Name of State) and duly authorized to transact business within the State of Ohio."

If the above bond is executed by private individuals as sureties, the affidavits in justification of sureties must be filled out in detail; in lieu of said affidavits, a certificate of the County Auditor of the County in which said sureties, or one of them, reside, or have property, may be furnished to the effect that in his judgement such sureties possess the qualifications required by Section 1341.01 Ohio Revised Code which reads as follows:

"Sureties must be residents of this State, and worth, in the aggregate, double the sum to be secured, beyond the amount of their debts, and have property liable to execution in this State equal to the sum to be secured."

If signed by a surety company said bond must be accompanied by (1) a certificate of the superintendent of insurance, that such surety company is authorized to transact business in this State; and (2) the power of attorney of the agent of such company showing his authority to execute said bond on its behalf, which power of attorney must be dated not more than ninety days previous to the signing of the contract; and (3) a recent financial statement of the surety company. In the event the bond exceeds 10% of the capital and surplus of the surety company signing the bond, the excess amount must be reinsured in some other surety company licensed to do business in Ohio and a certificate showing such reinsurance must accompany said bond.



Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

**This rider  
is effective**

(MONTH-DAY-YEAR)

**Signed and Sealed**

(MONTH-DAY-YEAR)

By: \_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

DRAFT 1-5-2024



**CONTRACT PAYMENT BOND**

(5525.16, 153.54 et seq O.R.C., also see 1311.27, 5525.12)

**KNOW ALL MEN BY THE PRESENTS:**

**THAT WE** (1) \_\_\_\_\_

\_\_\_\_\_ as principal (the "Principal" or "Contractor"), (2) \_\_\_\_\_

\_\_\_\_\_ ("Co-Surety"), (3) \_\_\_\_\_ ("Co-

Surety"), and (4) \_\_\_\_\_ ("Co-Surety"), each authorized to

do business in the State of Ohio, \_\_\_\_\_

\_\_\_\_\_ in the penal sum of \_\_\_\_\_

\_\_\_\_\_ (\$ \_\_\_\_\_), as the same may be adjusted from time to time in accordance

with any Payment Bond Rider, for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

**THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:**

**WHEREAS**, said Principal has heretofore filed with the Director of Transportation of the State of Ohio, a written proposal for the design construction and completion of

- (24)3002 | JEF-SR7-25.67 Mine Subsidence | PID 110873 (the "Project")

**WHEREAS**, said Director of Transportation has accepted said proposal and has awarded to said Principal a Progressive-Design Build Contract pertaining to the design, construction and completion of the JEF-SR7-25.67 Mine Subsidence | PID 110873 (the "Project") duly executed and delivered as of \_\_, 2023, as the same may be supplemented, modified, amended, or amended and restated (the "Contract"), on the terms and conditions set forth therein; and

**WHEREAS**, upon award of the Contract, Principal is required to furnish a payment bond (this "Bond") guaranteeing the faithful payment of its obligations under the Contract and the other Contract Documents (as defined in the Contract).

**NOW, THEREFORE**, Principal and Co-Sureties are duly licensed or authorized in the State of Ohio, are held and firmly bounded unto the Ohio Department of Transportation ("Obligee") in the initial amount of Four Hundred Thousand and 00/100 (\$400,000.00), subject to adjustment in accordance with one or more validly executed Payment Bond Rider(s) in the form attached hereto (collectively the "Bonded Sum"), for

payment of which sum Principal and Co-Sureties jointly and severally firmly bind themselves and their successors and assigns.

**NOW, THEREFORE, FURTHER AGREED**, if the said Principal shall pay all lawful claims of any subcontractors, materialmen, laborers or mechanics who have performed labor or furnished material, fuel, tools or machinery and for the use of and repairs to machinery and equipment used in carrying forward, performing or completing said contract, said Principal and Co-Sureties agreeing and assenting that this undertaking shall be for the benefit of any subcontractor, materialman, laborer or mechanic, having a just claim, then this obligation shall be void, otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated as the same may be adjusted from time to time in accordance with any Payment Bond Rider. It is further expressly understood and agreed that the liability of the Co-Sureties for any or all claims hereunder is governed by Ohio Revised Code Section (i) 5525.16, except as to the Principal's indemnification of any railroad company against any damage that may result by reason of the negligence of the Principal in making the improvement in the case of a railroad at grade separation as the scope of the Project does not include such railroad at grade separation, thus the Principal's indemnification shall not be required hereunder, and (ii) 5525.17, and nothing other than the foregoing limitation stated herein shall operate as a limitation upon the joint and several obligations of the Co-Sureties under that statute or any other provision under Ohio law.

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

1. Notwithstanding the provisions above, the amount of this Bond may be increased or decreased by the amount specified in a fully completed and executed Payment Bond Rider.
2. The Co-Sureties hereby agree to empower a single representative, who shall be an employee or agent of the Lead Surety if a Lead Surety is elected as described in Section 19.1.5 (Liability of Contractor and Surety/Occurrence of a Contractor Breach) of the PDBC, with the authority to act on behalf of all Co-Sureties with respect to this Bond, so that the Obligee and claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. Each of the other Co-Sureties hereby acknowledge and agree that the foregoing designation shall constitute a waiver of each Co-Surety' rights under this Bond or applicable law to receive any notices with respect to this Bond or to undertake any portion of the Work after a Contractor Default. The initial representative shall be \_\_\_\_\_ and all correspondence or claims relating to this Bond should be sent to the Surety at the following address:

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

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

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

Any capitalized terms used and not expressly defined herein shall be given the meaning assigned to them in the Contract.

The said Co-Sureties hereby stipulate and agree that any failure to complete Work at the times set forth in the Contract, or extensions of time for completion, or modifications, omissions or additions in or to the terms of said Contract, or in or to the other Contract Documents shall not in any way affect the obligation of said Co-Sureties on their bond. It is expressly acknowledged and agreed by the Co-Sureties the Principal the Oblige and their respective heirs, executors, administrators, successors and assigns that the listed amount under this Bond is for Sub-Phases 1A and 1B of the Contract and that the Bonded Sum under this Bond shall increase to meet the full entirety of the Contract Price as the Contract is amended pursuant to one or more Change Orders.

***[Remainder of the Page Left Intentionally Blank. Signature Page to Follow]***

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

In presence of (MUST BE WITNESSED)

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Witness to Attorney-in-fact

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Name of Surety Company (2)

\_\_\_\_\_  
Address of Surety Company (2)

\_\_\_\_\_  
Signature of Attorney-in-fact

\_\_\_\_\_  
Company of Attorney-in-fact

\_\_\_\_\_  
Address of Attorney-in-fact (include phone #)

\_\_\_\_\_  
Sureties

\_\_\_\_\_  
Principal

By \_\_\_\_\_

\_\_\_\_\_  
Name of Surety Company (1)

\_\_\_\_\_  
Address of Surety Company (1)

\_\_\_\_\_  
Signature of Attorney-in-fact

\_\_\_\_\_  
Company of Attorney-in-fact

\_\_\_\_\_  
Address of Attorney-in-fact (include phone #)

\_\_\_\_\_  
Sureties

\_\_\_\_\_  
Name of Surety Company (3)

\_\_\_\_\_  
Address of Surety Company (3)

\_\_\_\_\_  
Signature of Attorney-in-fact

\_\_\_\_\_  
Company of Attorney-in-fact

\_\_\_\_\_  
Address of Attorney-in-fact (include phone #)

\_\_\_\_\_  
Sureties

## INSTRUCTIONS

Attach corporate seal of Principal if corporation.

Attach corporate seal if each surety company signing as surety.

(1) If a corporation, insert on page 3, "A corporation organized under the laws of the State of (Name of State) with its principal place of business at (Address)."

(2) If a surety company, insert on page 3, "A corporation organized under the laws of the State of (Name of State) and duly authorized to transact business within the State of Ohio."

If the above bond is executed by private individuals as sureties, the affidavits in justification of sureties must be filled out in detail; in lieu of said affidavits, a certificate of the County Auditor of the County in which said sureties, or one of them, reside, or have property, may be furnished to the effect that in his judgement such sureties possess the qualifications required by Section 1341.01 Ohio Revised Code which reads as follows:

"Sureties must be residents of this State, and worth, in the aggregate, double the sum to be secured, beyond the amount of their debts, and have property liable to execution in this State equal to the sum to be secured."

If signed by a surety company said bond must be accompanied by (1) a certificate of the superintendent of insurance, that such surety company is authorized to transact business in this State; and (2) the power of attorney of the agent of such company showing his authority to execute said bond on its behalf, which power of attorney must be dated not more than ninety days previous to the signing of the contract; and (3) a recent financial statement of the surety company. In the event the bond exceeds 10% of the capital and surplus of the surety company signing the bond, the excess amount must be reinsured in some other surety company licensed to do business in Ohio and a certificate showing such reinsurance must accompany said bond.

# PAYMENT BOND RIDER

To be attached to and form a part of

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

**Type of  
Bond: Payment Bond**

Dated  
effective: \_\_\_\_\_  
(MONTH-DAY-YEAR)

\_\_\_\_\_, as Principal,  
(PRINCIPAL)

and by \_\_\_\_\_, as Surety,

in favor of **Ohio Department of Transportation**  
(OBLIGEE)

For the Progressive Design Build Contract for the (24)3002 | JEF-SR7-25.67 Mine Subsidence | PID 110873 Project.

**WHEREAS**, in accordance with the terms and conditions of the Contract, Principal and Obligee have reached agreement on and are prepared to execute a/the \_\_\_\_\_ to the Contract; and

**WHEREAS**, The Bonded Sum, as defined in the Payment Bond, hereunder shall (Select the one that best applies):

- increase** by \$ \_\_\_\_\_ effective upon and pursuant to the Obligee's issuance of the Notice to Proceed for Phase 2 under the Contract; or
- increase** by \$ \_\_\_\_\_ effective upon and pursuant to the Change Order executed \_\_\_\_\_.

bringing the total amount of the Bonded Sum of the Payment Bond to \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars and No Cents).

**NOW, THEREFORE**, in consideration of the mutual agreements herein contained the Principal and the Surety hereby consent to the following:

2. The Penal Sum of the Payment Bond shall be hereby increased to the total Contract amount of \$ \_\_\_\_\_ ( \_\_\_\_\_ Dollars and No Cents), effective on the date of full execution of the \_\_\_\_\_.

Nothing herein contained shall vary, alter or extend any provision or condition of this bond except as herein expressly stated.

This rider  
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

By: \_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_  
(SURETY)

By: \_\_\_\_\_  
**Attorney in fact**

DRAFT 1-15-2024

## EXHIBIT L: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PERFORMANCE PLAN AND GOOD FAITH EFFORTS

### DBE PERFORMANCE PLAN

A DBE Performance Plan shall be submitted by the Contractor to the Department at the Change Order for Sub-Phase 1B, and Phase 2. The DBE Performance Plan shall set forth specific information demonstrating how the Contractor will achieve the DBE goal and shall include the following information:

1. The names and addresses of the certified DBE firm(s) committed;
2. A description of the work each DBE firm will perform. Each DBE firm must be certified in a NAICS code applicable for the kind of work the firm will perform in order to count towards meeting the DBE goal;
3. Whether the DBE firm(s) being used to meet the DBE goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity;
4. The dollar amount each DBE firm will be utilized for in order to meet the DBE goal;
5. Written documentation of the Offeror's commitment to use a DBE firm whose participation it submits to meet a contract goal; and
6. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and percentage of work provided in the Offeror's commitment.

By submitting a DBE Performance Plan, the Contractor is affirming that they will be using the DBE firms identified in the DBE Performance Plan to meet the DBE goal.

The DBE Performance Plan shall be submitted with the Phase 2 Proposal and will be a DBE Open Ended Performance Plan requiring updates throughout Phase 2 as more details are identified regarding anticipated work opportunities. The initial DBE Performance Plan submitted with the Phase 2 Proposal shall include the following information:

1. Types of work;
2. Estimated dollar value for each type of work;
3. Estimated time frame for when each type of work will be performed on the project.

As more details are identified regarding anticipated work opportunities, the DBE Performance Plan will be required to include the following information:

1. The names and addresses of the certified DBE firm(s) committed;
2. A description of the work each DBE firm will perform. Each DBE firm must be certified in a NAICS code applicable for the kind of work the firm will perform in order to count towards meeting the DBE goal;
3. Whether the DBE firm(s) being used to meet the DBE goal will be utilized as a subcontractor, regular dealer, manufacturer, consultant or other capacity;



4. The dollar amount each DBE firm will be utilized for in order to meet the DBE goal;
5. Written documentation of the Offeror's commitment to use a DBE firm whose participation it submits to meet a contract goal; and
6. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and percentage of work provided in the Offeror's commitment.

### **DBE AFFIRMATION**

The DBT shall ensure the DBE firms being utilized to meet the DBE goal affirm their participation in the Project prior to submittal of any Work Package Proposal. The contract dollar amount(s) and/or DBE firm(s) included in the DBT's DBE Performance Plan must match the contract dollar amount(s) and/or DBE firm(s) included on the DBE Affirmation Form(s). If the contract dollar amount(s) and/or DBE firm(s) do not match, the DBT shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx> and submit for review and approval by the Office of Small & Disadvantaged Business Enterprise within five (5) calendar days of the Work Package Proposal submittal.

The DBT shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The DBE Affirmation Form will be utilized as written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the DBT's DBE Performance Plan. The DBT shall submit a separate DBE Affirmation Form for each DBE it is utilizing for the DBE goal and their Good Faith Efforts package if they were not able to attain the DBE Goal via DBE participation.

In the event a DBE firm fails to confirm the information contained in the DBE Affirmation Form within five calendar days of Work Package Proposal submittal, the DBT shall submit a Request to Terminate/Substitute DBE Form, as set forth herein. The Request to Terminate/Substitute DBE Form shall be submitted within five (5) calendar days after Work Package Proposal submittal. The DBT shall include as its reason for termination the DBE firm's failure to provide a timely affirmation and should include all efforts the DBT made to obtain the affirmation from the DBE firm and shall attach proof of these efforts, if available. If the DBT intends to replace the DBE Firm, it shall include the replacement firm's information on the form. In the event the DBT is unable to affirm a DBE firm included in its original DBE Performance Plan at Work Package Proposal submission and it results in a goal shortfall, Good Faith Efforts (GFE's) must be submitted by the fifth calendar day after Work Package Proposal submittal. All GFE documentation submitted for consideration should demonstrate the efforts the DBT made prior to the time of Work Package Proposal submission to secure sufficient DBE participation on the project to meet the DBE goal although the DBT was unable to do so. A DBE firm's failure to timely confirm information contained in the DBE Affirmation Form will be considered as good cause to terminate the DBE firm and will also be considered a part of the Contractor's Good Faith Efforts in meeting the goal.

### **GOOD FAITH EFFORTS (GFE's)**

In the event that the DBE contract goal established by ODOT is not met, the DBT shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

If the DBT does not meet the goal at Work Package Proposal submittal, the DBT shall submit its Good Faith Efforts (GFE's) documentation within five (5) calendar days of Work Package Proposal submittal. Submission of DBE Affirmation(s) with additional participation sufficient to meet the DBE contract goal does not cure the DBT's failure to meet the goal at bid time or eliminate the DBT's responsibility of submitting GFE's within five (5) calendar days of the Work Package Proposal submittal.

The DBT shall demonstrate its GFE's by submitting the following information within five (5) calendar days after the Work Package Proposal submittal:

1. All written quotes received from certified DBE firms;
2. All written (including email) communications between the Contractor and DBE firms;
3. All written solicitations to DBE firms, even if unsuccessful;
4. Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract; and
5. Phone logs of communications with DBE firms.

The DBT shall utilize the Pre-Bid GFE Template to document their GFE's. This template and supporting documentation shall be sent along with any DBE Affirmation Forms within five (5) calendar days of Work Package Proposal submittal. ODOT has provided Good Faith Efforts Guidance located at:

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/DBE%20Goal%20Forms/Contractors%20Good%20Faith%20Efforts%20Guidelines.pdf>.

All other Contractors shall submit documentation of GFE's if notified that the information is required in order for ODOT to complete its bid assessment. Contractors shall have five (5) calendar days from the date of notification to submit all required GFE documentation. Notification will be by phone or email.

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the DBT has made adequate good faith efforts to meet the goal. The Department and/or its representatives will have ultimate oversight and responsibility to determine compliance with respect to all State and Federal requirements.

### **ADMINISTRATIVE RECONSIDERATION**

ODOT will review the GFE documentation and issue a written determination on whether adequate GFE's have been demonstrated prior to contract award. If ODOT determines that the DBT has failed to demonstrate adequate GFE's to meet the goal, the DBT will have an opportunity for administrative reconsideration prior to the contract being awarded.

As part of this reconsideration, the DBT may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. Such written documentation or argument must be provided to ODOT, attention to the Office of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223 (with copy to the Office of Contract Sales, MS 4110), within two (2) business days of ODOT's written determination that GFE's were not adequately demonstrated. The DBT may also include in their written documentation a request for an in person meeting to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT's Office of Chief Legal Counsel

will respond to the Contractor within five (5) business days of receiving written documentation or holding the in-person meeting.

ODOT will send the DBT a written decision on reconsideration explaining the basis for finding that the DBT did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

### **TERMINATION OR REPLACEMENT OF A DBE**

By submitting a DBE Performance Plan, the DBT is committing to use the DBE firms identified in the plan. The DBT shall utilize the specific DBEs listed in the DBE Performance Plan to perform the Work and supply the Materials for which each is listed unless the DBT obtains written consent as provided in this paragraph. In order to request termination or substitution of a DBE firm, the DBT shall utilize the Request to Terminate/Substitute DBE Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>.

This termination/replacement procedure applies only to DBE firms or the amount of work being utilized to meet the goal.

Without ODOT's written consent to terminate/replace a DBE firm being utilized to meet the goal, the Contractor shall not be entitled to any payment for DBE listed work or material unless it is performed or supplied by the listed DBE.

### **GOOD CAUSE**

ODOT may provide written consent to terminate a DBE only if it agrees, for reasons stated in a concurrence document, that the DBT has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause to terminate a DBE includes the following circumstances:

1. The listed DBE firm fails or refuses to provide the required DBE Affirmation Form or to execute a written contract;
2. The listed DBE firm fails or refuses to perform the work of its subcontract in a manner consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform its work on the subcontract results from the bad faith or discriminatory action of the awarded contractor;
3. The listed DBE firm fails or refuses to meet the awarded contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;
6. ODOT has determined that the listed DBE firm is not a responsible contractor;
7. The listed DBE firm voluntarily withdraws from the project and provides to you written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;

9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
10. Other documented good cause that ODOT determines compels the termination of the DBE firm. Provided, that good cause does not exist if the awarded contractor seeks to terminate a DBE it relied upon to obtain the contract so that the awarded contractor can self-perform the work for which the DBE contractor was engaged or so that the awarded contractor can substitute another DBE or non-DBE contractor after contract award.

## REPLACEMENT

When a DBE firm is terminated or fails to complete its work on the contract for any reason the DBT must make GFEs to find another DBE firm to replace the original DBE. These GFEs shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The GFEs shall be documented by the DBT. If ODOT requests documentation under this provision, the DBT shall submit the documentation within seven (7) calendar days, which may be extended for an additional seven (7) calendar days if necessary at the request of the contractor, and ODOT shall provide a written determination to the contractor stating whether GFEs have been demonstrated.

## ADDITION

In the event additional DBE participation is required beyond the originally approved DBE Performance Plan for each Phase, the DBT shall utilize the DBE Affirmation Form located at <http://Transportation.ohio.gov/Divisions/ODI/SDBE/Pages/Resources.aspx>. The executed DBE Affirmation Form will be utilized as written confirmation from each DBE firm that it is participating in the contract in the kind and amount of work on the project and shall be submitted with the monthly DBE Performance Plan.

## WRITTEN NOTICE TO DBE

Before transmitting to ODOT its request to terminate and/or substitute a DBE firm, the DBT must give notice in writing to the DBE firm, with a copy to ODOT, of its intent to request to terminate and/or substitute, and the reason(s) for the request.

The DBT must give the DBE five calendar days to respond to the notice, advising ODOT and the DBT of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the DBT's action. If required in a particular case as a matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five days.

## GOAL ATTAINMENT POST AWARD

The DBT shall make available upon request a copy of all DBE subcontracts. The DBT shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower tier subcontractors be performed in accordance with this Exhibit L.

Approval of a DBE Performance Plan does not ensure approval of C-92 Requests to Sublet nor does approval of a DBE Performance Plan indicate that the DBE goal has been met. ODOT will monitor goal attainment throughout the life of the project. It is the responsibility of the DBT to

advise ODOT of any changes to the DBE Performance plan throughout the life of the project. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly. The Department and/or its representatives will have ultimate oversight and responsibility to determine compliance with respect to all State and Federal requirements.

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

### **POST-BID**

Failure by the DBT to carry out the requirements of this Exhibit L, including the submission of adequate good faith efforts to meet the goal for a project, is a material breach of the contract and may result in the issuance of sanctions as follows:

- Liquidated damages; and/or
- Disqualifying the Contractor from future bidding as non-responsible; and/or
- Contract termination; and/or
- Other remedies available by law including administrative suspension (debarred from pursuing additional contracts).

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The magnitude and the type of offense.
- The degree of the DBT's culpability.
- Any steps taken to rectify.
- The DBT's record of performance on other projects including, but not limited to:
  - Annual DBE participation;
  - Annual DBE participation on projects without goals;
  - The number of complaints ODOT has received regarding the DBT; and
  - The number of times the DBT has been previously sanctioned by ODOT.

## **EXHIBIT M: DISADVANTAGED BUSINESS ENTERPRISE TRUCKING; DBE MATERIALS AND SUPPLIES VENDORS (MSVS)**

### **COUNTING DBE TRUCKING TOWARDS DBE CONTRACT GOALS**

The DBT may meet a Disadvantaged Business Enterprise (DBE) contract goal using DBE trucking firms, but only when such firms perform a commercially useful function (CUF). The DBT must not include a DBE trucking firm on its DBE Performance Plan if it is aware that the firm will not be performing a CUF. Even if a DBE trucking firm will be performing a CUF, the dollar amount of trucking services it provides may not be fully countable towards the DBE contract goal. When including a DBE trucking firm that will be performing a CUF on its DBE Performance Plan, the DBT must only include the portion of the dollar amount of which it is aware will count towards the DBE contract goal.

The DBT is responsible for performing any Good Faith Efforts (GFEs) that may be necessary if it includes, in good faith, a DBE trucking firm on its DBE Performance Plan and the DBT becomes aware (or is made aware) that the DBE trucking firm is not performing a CUF or that the trucking services provided by the DBE trucking firm are not countable to the extent previously believed. All tiers of subcontractors must be monitored for CUF. The Department and/or its representatives will have ultimate oversight and responsibility to determine compliance with respect to all State and Federal requirements.

A DBE trucking firm performs a CUF only when:

- It provided the DBT with a quote. The DBE trucking firm must be given the opportunity to negotiate its rates.
- It is responsible for the management and supervision of its entire trucking operation, including any valid arrangement(s) (as described below) in which its services are countable towards the DBE contract goal. The extent of the DBE trucking firm's management and supervision are considered on a case-by-case basis. The existence of a contract between the Awarded DBT and the DBE trucking firm is not in and of itself an indicator that the DBE trucking firm is performing a CUF, especially if the contract exists for the mere purpose of creating the appearance of DBE participation.
- It must own and operate at least one fully licensed, properly insured, and operational truck used on the contract.

When a DBE trucking firm performs a CUF, the dollar amount of trucking services it provides counts towards the DBE contract goal only in instances meeting at least one of the following criteria:

- It provides trucking services using trucks it owns, properly insures, and operates using drivers it employs (i.e., that are not 1099 "employees"/independent contractors).

It provides trucking services with trucks that are leased on a long-term basis (i.e., one year or more) from a non-DBE truck leasing company, properly insured, and operated by drivers it employs.

The dollar amount of trucking services provided using leased trucks will only be countable in cases where all the following circumstances apply:

- The DBE trucking firm's lease indicates that the DBE trucking firm has exclusive use of and control over the leased truck(s), including responsibility for maintenance and insurance. This does not preclude the leased truck(s) from working for others during the term of the lease with the DBE trucking firm's consent, as long as the lease gives the DBE trucking firm absolute priority for use of the leased truck(s).
- The leased trucks display the DBE trucking firm's name and federal identification number.
- The leased truck(s), when onsite, carry a copy of the lease agreement.

### **DBE TRUCKING DISCLOSURE AFFIDAVITS**

In order to ensure the DBT is monitoring DBE trucking/hauling operations on projects with federal funding, the DBT must complete monthly DBE Trucking Disclosure Affidavits ("Affidavits"). An Affidavit must be completed for all DBE trucking/hauling operations, regardless of whether the work is counting towards a DBE contract goal. The Affidavit will be completed by the DBT and emailed to the designated Compliance Officer (CO) by the 10th of each month. This information will be used to affirm DBE and non-DBE trucking utilized by each DBE firm performing those duties during the previous month.

ODOT will monitor trucking with the following requirements for all ODOT-let projects:

1. The DBT will be required to provide a master list of trucks for all anticipated DBE trucking firms to the CO within seven days of executing the changed order for Phase 2 of the contract.

Note: If no DBE trucking is anticipated on a project, the DBT will complete the "No Anticipated DBE Trucking Affidavit" and submit it to the CO within seven days of the execution of the change order for Phase 2 of the contract. If DBE trucking/hauling does occur, the DBT must notify the CO within seven days of the DBE trucking activity. The DBT will then complete the monthly Affidavits as required below.

2. The CO will email the Affidavit to the DBT, along with the Pre-Construction documentation. The DBT will be required to complete the Affidavit disclosing the DBE trucking operations during the previous month. The Prime will return the Affidavit by the 10th day of each month (if the 10th day falls on a weekend, the deadline moves to the following Monday).

They will select one of the following options on the Affidavit:

- The DBE firm performed trucking by utilizing their own Equipment and workforce and/or work was subcontracted to another DBE (i.e. only trucking that can be counted for DBE participation was utilized).

Note: No other information is required. The DBT will sign and submit the Affidavit.

- The DBE firm utilized DBE & Non-DBE trucking.

Note: DBT will provide a list of Non-DBE trucking that was utilized (i.e., not all trucking will earn DBE credit).

- No trucking was performed.

Note: No other information is required. The DBT will sign and submit the Affidavit.

3. Trucking will continue to be monitored at project sites by construction field staff and the COs.

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

Failure by the DBT to follow the DBE Trucking Disclosure Affidavit requirements may result in the issuance of sanctions as follows:

- 1st Level Occurrence: The Administrator for the Office of Civil Rights Compliance, under the Division of Opportunity, Diversity & Inclusion (ODI), will issue a Letter of Reprimand to the DBT (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the DBT completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the CO within seven days of the activity).
- 2nd Level Occurrence: ODI may withhold an estimate in the amount due to the DBE trucking firm(s) that the Affidavit was not submitted for (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the DBT completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the CO within seven days of the activity).
- 3rd Level Occurrence: If a pattern of not submitting the Affidavit(s) persists or the DBT has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The DBT's past project practices;
- The magnitude and the type of offense;
- The degree of the DBT's culpability;
- Any steps taken to rectify;
- The DBT's record of performance on other projects; and
- The number of times the DBT has been previously sanctioned by ODOT.

## **COUNTING MATERIALS AND SUPPLIES PURCHASES FROM DBE MATERIALS AND SUPPLIES VENDORS (MSVS)**

The DBE MSV Directory is available within the Ohio Unified DBE Directory at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx> (select MSV only).

The DBT may meet a Disadvantaged Business Enterprise (DBE) contract goal using DBE MSVs. The dollar amount of materials or supplies purchased from a DBE MSV will usually not be fully countable towards the DBE contract goal. When including a DBE MSV on its DBE Performance Plan, the DBT must only include the portion of the dollar amount of which it is aware will count towards the DBE contract goal.

The DBT is responsible for performing any Good Faith Efforts (GFEs) that may be necessary if it includes, in good faith, a DBE MSV on its DBE Performance Plan and the DBT becomes aware (or is made aware) that the materials or supplies purchased from the DBE MSV are not countable to the extent previously believed.

The DBT must seek information from DBE MSVs to allow it to be sufficiently informed about the nature of the transaction and which scenario listed below applies. The DBT must document this information on the DBE Affirmation Form:



<https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/business-economic-opportunity/dbe/dbe-resources/pn-013-affirmation>

## BE MSV COUNTING SCENARIOS

- The purchase price of materials and supplies obtained from a DBE MSV may be fully countable only if the DBE MSV:
  - Manufactures the item(s), as indicated by the information provided by the DBE MSV (subject to verification by the Department). A manufacturer DBE MSV is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or Equipment required under the contract and of the general character described by the specifications;
  - Is certified in the correct (manufacturer) NAICS code(s) for the item(s); and
  - Is certified in the correct MSV descriptor(s) for the item(s), if its manufacturing facility is located in Ohio.
- The purchase price of materials and supplies obtained from a DBE MSV may be countable at 60 percent only if the DBE MSV:
  - Does not manufacture the item(s);
  - Owns, operates, or maintains a store, warehouse, or other establishment in which item(s) of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business, as indicated by the information provided by the DBE MSV (subject to verification by the Department) (See below for an exception to this requirement for items that are considered bulk items.);
  - Is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the item(s);
  - Is certified in the correct (wholesale or retail) NAICS code(s) for the item(s);
  - Is certified in the correct MSV descriptor(s) for the item(s), if its store/warehouse/other establishment is located in Ohio; and
  - Does not drop-ship the item(s).
- The purchase price of materials and supplies that are considered bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and are obtained from a DBE MSV may be countable at 60 percent only if the DBE MSV:
  - Delivers the item(s) using distribution Equipment that it both owns (or for which it has a long-term (one year or more) lease) and operates with its regular (not ad hoc) employees, as indicated by the information provided by the DBE MSV (subject to verification by the Department);
  - Is an established, regular business that engages, as its principal business and under its own name, in the purchase and sale of the item(s);
  - Is certified in the correct (wholesale or retail) NAICS code(s) for the item(s);
  - Is certified in the correct MSV descriptor(s) for the item(s), if located in Ohio;
  - Is certified in the correct trucking NAICS code(s); and
  - Does not drop-ship the item(s).

- The purchase price of materials and supplies obtained from a DBE MSV but not in accordance with any of the above scenarios is not countable, but the fees or commissions charged by the DBE MSV are countable if the DBE MSV:
  - Is certified in NAICS code 425120 Wholesale Trade Agents and Brokers; and
  - Convincingly explains how the Selected/Awarded DBT benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling.

All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

DRAFT-11-19-2024

## EXHIBIT N: CONTRACT PROVISIONS FOR FEDERAL AID CONSTRUCTION CONTRACTS

The Work herein proposed will be financed in whole or in part with federal funds, and therefore all of the statutes, rules and regulations promulgated by the federal government and applicable to Work financed in whole or in part with federal funds will apply to such Work. The required contract provisions for federal-aid construction contracts (contained in Form FHWA 1273 revised July 2022 and located in Attachment 1 to Exhibit N) are hereby incorporated by reference as if rewritten herein. Form FHWA-1273 shall be physically incorporated in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreement for supplies or services related to a construction contract). The Contractor shall be responsible for ensuring that the FHWA-1273 is physically incorporated into all lower-tier subcontracts. Whenever in said required FHWA-1273 contract provisions references are made to:

- A. "contractor," "prime contractor," "bidder" or "prospective primary participant," such references shall be construed to mean the Design-Build Team or any authorized representative thereof or Contractor and any authorized representative thereof, as may be appropriate under the circumstances;
- B. "contract" or "prime contract," such references shall be construed to mean the PDBC;
- C. "subcontractor," "supplier," "vendor," "prospective lower tier participant" or "lower tier subcontractor," such references shall be construed to mean, as appropriate, Subconsultant, Subcontractor, Supplier or any other lower-tier entity that is not the Contractor and/or Designer; and
- D. "department," "agency" or "department or agency entering into this transaction," such references shall be construed to mean the Department, except where a different department or agency is specified.

These statutes, rules and regulations promulgated by the federal government are contained in Attachment 2 to Exhibit N and are hereby incorporated by reference as if rewritten herein and the Contractor shall comply with them as applicable to the performance of the Work and this PDBC. Some of the federal government statutes, rules, and regulations contained in Attachment 2 of Exhibit N may be duplicative of those contained in Attachment 1 of Exhibit N.

The Contractor, DBT, and Designer, hereby acknowledge and agree to comply with (i) any and all of the federal statutes listed herein in this Exhibit N as may be applicable to the Contractor in the performance of the Work, (ii) any additional federal statute, rule, regulation, circulars and/or executive order that may be required under any current source of federal funding, or (iii) any future source of government funding. The Contractor, DBT, and Designer further agree to execute any and all certificates attached hereto.

### SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the Contractor, DBT, and Designer to include the provisions of FHWA-1273 in their contract or in their lower-tier subcontracts may result in the issuance of sanctions as follows:

- A. 1st Tier: Letter of Reprimand.
- B. 2nd Tier: Damages equivalent to the daily liquidated damages amount found in C&MS Section 108.07 for each incident of non-compliance.

- C. 3rd Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- A. The magnitude and the type of offense;
- B. The degree of the Contractor's culpability;
- C. Any steps taken to rectify;
- D. The Contractor's record of performance on other projects; and
- E. The number of times the Contractor has been previously sanctioned by ODOT.

### **RECOVERED MATERIALS**

The Contractor, DBT, and Designer and its contractors (at all tiers) shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), including the regulatory provisions of 40 C.F.R., Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R., Part 247. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R., Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **NON-COLLUSION PROVISION**

The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by 23 U.S.C. § 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. § 1746, is included in the Proposal.

### **PERTINENT NON-DISCRIMINATION AUTHORITIES**

During the performance of this Contract, the Contractor, DBT, and Designer, their assignees, and successors in interest agree to comply with the following non-discrimination statutes and authorities; including but not limited to as applicable:

- A. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21;

- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- C. Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- D. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- E. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- H. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- I. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

### **DAVIS-BACON ACT AND PREVAILING WAGE**

Construction projects on Federal-aid highways are subject to prevailing wage rate requirements. The Davis-Bacon Act applies to this Project in accordance with Attachments 1 and 2.

**ATTACHMENT 1 TO EXHIBIT N**

FHWA-1273 – Revised July 5, 202

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

## General

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

## ATTACHMENTS

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

## I. GENERAL

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

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

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

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### 6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting

the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

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

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

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

#### 10. Assurances Required:

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

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

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

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

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

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



- (1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;
- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and
- (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

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

### III. NONSEGREGATED FACILITIES

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

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

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

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway, 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt, 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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

#### I. 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 I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general 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).

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.

DRAFT 1-5-2024

**ATTACHMENT 3 TO EXHIBIT N  
NON-COLLUSION AFFIDAVIT**

TO ACCOMPANY PROPOSALS OR BIDS

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being first duly sworn, deposes and says:  
(Type or print name)

that he or she is the \_\_\_\_\_ of  
(Type or print title)

\_\_\_\_\_, who submits herewith  
(Type or print name of company/firm)

to the \_\_\_\_\_ attached bid/proposal; that he or she is the person whose name is signed to the attached bid/proposal is genuine; that the same is not sham or collusive; that all statements of fact therein are true; and that such bid/proposal as not made in the interest or behalf of any person, partnership, company, association, organization, or corporation not herein name or disclosed.

Affiant further deposes and says: that the bidder/proposer has not directly or indirectly by agreement, communication or conference with anyone attempted to induce action prejudicial to the interests of the public body which is to award the contract, or of any other bidder/proposer, or anyone else interested in the proposed contract; and that the bidder/proposer has not in any manner sought by collusion to secure for himself/herself/themselves, an advantage over any other bidder/proposer.

Affiant further deposes and says that prior to the opening and reading of bids/proposals, said bidder/proposer:

- (a) did not, directly or indirectly, induce or solicit anyone else to submit a false or sham bid/proposal;
- (b) did not, directly or indirectly, collude, conspire, connive or agree with anyone else hat said bidder/proposer or anyone else would submit a false or sham bid, or that anyone should refrain from biding or withdraw bid/proposal;
- (c) did not, in any manner, directly or indirectly, seek by agreement communication, or conference with anyone to raise or fix the bid price of said bidder/proposer or of anyone else or to raise or fix any overhead profit or cost element of their price or of that of anyone else;
- (d) did not, directly or indirectly, submit their bid/proposal price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereof, to any corporation, partnership, company, association organization, bid depository, or to any member or agent, thereof, or to any individual or group individuals, except to the awarding authority or to any person or person who have a partnership or other financial interest with said bidder/proposer in their business.

Signed: \_\_\_\_\_

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

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

Subscribed and sworn to (or affirmed) before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by

\_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

**WARNING:** Bids will not be considered unless the affidavit hereon is fully executed including the affidavit of the notary and the notarial seal.

**ATTACHMENT 4 TO EXHIBIT N**  
**FEDERAL PREVAILING WAGE RATE**

(Wage determination(s) will be included at a subsequent date prior to the authorization of the Phase 2 Change Order)

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**ATTACHMENT 5 TO EXHIBIT N****COMPLIANCE WITH BUY AMERICA REQUIREMENTS**

The Contractor shall comply with the Federal Highway Administration (“FHWA”) Buy America Requirement in 23 C.F.R. § 635.410 and all relevant provisions of the Build America, Buy America Act (“BABA”), contained within the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, §§ 70901-52 enacted November 15, 2021. The BABA requires all iron, steel, manufactured products, and construction materials incorporated permanently into the work in infrastructure projects funded by federal financial assistance to be produced in the United States and all subsequent manufacturing must be performed in the United States.

BABA permits FHWA participation in the Contract only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used, and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Manufacturing is any process that modifies the chemical content; physical shape or size; or final finish of a product and begins with the initial melting and mixing and continues through the bending and coating stages. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. If a domestic product is taken out of the United States for any process, it becomes a foreign source material.

BABA permits FHWA participation in the Contract only if all “construction materials” as defined in the Act are made in the United States. BABA defines “construction materials” to include the following materials: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; and drywall. This requires that all manufacturing processes for the construction material listed above has occurred in the United States. The Contractor’s obligation contained herein is subject to any applicable waiver of BABA requirements.

Furthermore, to provide clarity to item, product, and material manufacturers and processers, we note that items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials. For example, a plastic framed sliding window should be treated as a manufactured product while plate glass should be treated as a construction material.

The Director may grant specific written permission to use foreign steel or iron in any type of construction so long as the use of foreign steel and iron materials is minimal, provided the cost of such materials does not exceed 0.1% of the total contract price under the Contract or \$2,500.00 whichever is greater. The cost of such materials is the value of the product as delivered to the project. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

Finally, BABA permits the continuation of FHWA's current general applicability waivers for manufactured products, raw materials, and ferryboat parts, but these waivers are subject to reevaluation.

Concurrently with execution, the Contractor has completed and submitted, or shall complete and submit, to the Department a Buy America Certificate, in the format below, which certifies to the Department the domestic origin of all products covered by this section, before they are incorporated into the Work. Products without a traceable domestic origin will be treated as a non-domestic product. After submittal, the Contractor is bound by its original certification. A false certification is a criminal act in violation of 18 U.S.C. § 1001. The Contractor has the burden of proof to establish that it is in compliance.

At the Contractor's request, the Department may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist pursuant to 23 C.F.R. § 635.410(c) or any relevant provisions of BABA. However, the Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by the Department.

**BUY AMERICA CERTIFICATE**

**Certificate of Compliance**

The Contractor hereby certifies that it will comply with all relevant provisions of the Build America, Buy America Act, contained within the Infrastructure Investment and Jobs Act, Pub. L. NO. 117-58, §§ 70901-52, the requirements of 23 U.S.C. § 313, and the applicable regulations in 23 C.F.R. § 635.410.

OFFEROR \_\_\_\_\_

SIGNATURE \_\_\_\_\_

NAME (printed or typed) \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

DRAFT 1-13

## EXHIBIT O: NOTICE OF REQUIREMENT OF AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY AND WORKFORCE DIVERSITY REQUIREMENTS ON ALL ODOT ADMINISTERED FEDERALLY FUNDED PROJECTS

The DBT's attention is called to the affirmative action obligations required by the specifications set forth in 23 CFR Part 230, 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) of 1974.

### Workforce Utilization Goals

Utilization goals applicable to the project, expressed in percentages, for minority and female participation for each construction craft can be found in the Technical Requirements. These goals are based on 2020 census data and represent the area, per craft, minority and female availability pool.

- **Census Availability Percentages for minority and female workers** by craft per county (applicable to project):
  - <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.xlsx>.
  - <http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/CensusForAllCounties.pdf>.
- **Statewide utilization obligations/ goals for minority workers** by county (applicable to each project).
- **Statewide utilization obligation/ goal for female workers is 6.9 percent** and applies the same for each county.

**Source: US Department of Labor's, Office of Federal Contract Compliance Programs, Technical Assistance Guide for Construction Contractors (pp. 126 – 127).**

[Construction Contractors Technical Assistance Guide \(dol.gov\)](https://www.dol.gov/eis/whd/technical-assistance-guide).

070 Toledo, OH: SMSA Counties:

8400 Toledo, OH-MI 8.8 MI Monroe; OH Fulton; OH Lucas; OH Ottawa; OH Wood.

Non-SMSA Counties 7.3 MI Lenawee; OH Hancock; OH Henry; OH Sandusky; OH Seneca; OH Wyandot.

### The New Hire Definition for the purposes of on-the-job training and workforce utilization is as follows:

An individual who has a break in service (not on an employer's payroll) for a period of 12 months or longer and the person affected is not a salaried employee but belongs to a union craft. Individuals compensated for training or incidental work which does not cause a break in unemployment compensation, i.e., paid by voucher check or petty cash, are considered new hires if the individual's break in service is 12 months or longer.

The time frame for a new hire shall be associated with the first project worked for the DBT regardless of whether it is public or private. When reporting a newly hired employee, the DBT shall identify that employee as a new hire on that specific project only. Subsequent work, barring a break in service of 12 months or more, would not qualify the employee as a new hire for the DBT.

**Compliance:** The DBT's compliance shall be based on the implementation of affirmative action obligations required by the specifications set forth in 23 CFR Part 230, and its good faith efforts to meet these obligations. The hours of minority and female employment and training must be substantially uniform throughout the length



of the contract, and in each trade, and the DBT shall make a good faith effort to employ minorities and females on its project. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the affirmative action obligations shall be a violation of the contract and regulations in 23 CFR Part 230. The good faith efforts put forth by the DBT will be measured against the total work hours performed.

Under FHWA, ODOT is the authority tasked with ensuring that the DBT adheres to the aforementioned regulations. In addition to complying with the Required Contract Provisions, the DBT shall provide immediate written notification to ODOT when referral practices of the union(s) with which the DBT has a collective bargaining agreement impede the company's efforts to meet its equal opportunity obligations.

The U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP), administers and enforces equal employment opportunity laws that apply to Federal government contractors and subcontractors supplying goods and services, including construction, to the Federal Government under 41 CFR Part 60, Executive Order 11246, Section 503, and the affirmative action provisions of VEVRAA. The OFCCP monitors compliance with these laws primarily through compliance evaluations, during which a compliance officer examines the contractor's affirmative action efforts and employment practices. Under Executive Order 11246, the OFCCP may perform contract compliance reviews on contractors involved with federally funded ODOT projects.

Requirements for affirmative action obligations governing OFCCP contract compliance reviews are those listed in the Federal Register for the Economic Area.

[Federal Register: Government Contractors, Affirmative Action Requirements](#) (2000).

[Federal Register: RIN 1250-AA10](#) (2020 updates).

### **Additional requirements for ODOT projects with state funding**

The Ohio Department of Development (ODOD), Minority Business Division, is responsible for ensuring state contractors implement and adhere to the State of Ohio's affirmative action program pursuant to [Ohio Administrative Code \(OAC\) 123: Chapters 123:2-3-01 through 123:2-3-07](#). Specifically, this unit's responsibilities includes the issuance of certificates of compliance under [ORC 9.47](#) and [153.08](#), conducting project site visits, and compliance reviews (desk audits) to ensure contractors utilize minorities and women in the construction trades, and maintain a working environment free of discrimination, harassment, and intimidation. The ODOD may perform contract compliance reviews on contractors involved with state or state assisted projects. Requirements for affirmative action obligations governing ODOD contract compliance reviews are those listed in OAC 123:2-3-02, for the Metropolitan Statistical Area in which a project is located.

The DBT and all subcontractors regardless on the number of employees or the state contract amount are required to submit monthly utilization reports (Input Form 29) to the Ohio Department of Development covering the contractor's total workforce within the state of Ohio (private sector and public sector projects). The reports must be filed electronically by the 10th of each month, beginning with the contract award and continuing until the DBT or subcontractor completes performance of the contract, as set forth in OAC 123:2-9-01.

I-29 monthly reports must be submitted via the Ohio Business Gateway portal: <https://ohio.gov/wps/portal/gov/site/business/resources/ohio-business-gateway> / [Ohio Business Gateway | Ohio.gov | Official Website of the State of Ohio](#).

*Steps to Submit the I-29 Form:*

1. Visit [Ohio Business Gateway](#)

2. Log in using username and password (OH|ID)
3. Ensure "Equal Opportunity Division" is among available service areas
4. Ensure "Input 29" is among available transactions
5. Select "Input 29" and complete the form
6. Click "File" button on the Summary page to see a confirmation page
7. Submit supporting documentation (if required) to: [das-eod.bccu@das.ohio.gov](mailto:das-eod.bccu@das.ohio.gov)

I-29 reports are used by ODOT to create monthly utilization work hour reports to monitor adherence to on-the-job training requirements and workforce diversity requirements. The DBT and all subcontractors shall provide monthly utilization work hour reports for the DBT's or subcontractor's total workforce within the state of Ohio to the compliance officer of the contracting agency (ODOT). The DBT's or subcontractor's failure to submit a monthly utilization work hour report shall be a basis for invoking any of the sanctions set forth in rule 123:2-7-01 of the Ohio Administrative Code.

### **FEDERAL WORKFORCE DIVERSITY REQUIREMENTS**

Affirmative Action and Equal Employment Opportunity requirements apply to federal transportation projects over \$10,000 (41 CFR 60-4 and Executive Order 11246). As a part of these requirements, there are workforce goals for female and minority workers. There is a statewide goal of 6.9% for female workers on all projects over

\$10,000 and the goal for minority workers varies by county. (See availability and goal information in links on page 1). **The DBT is required to meet the workforce diversity goals by the end of a project.**

ODOT will monitor the progress toward meeting these goals throughout the life of the project. The totality of the project workforce hours (including the various trades utilized) must be met and complied with by the DBT. ODOT will monitor compliance using the following process:

- 1) Present quarterly reports showing the percentage of female and minority workers hired by the DBT on projects. The reports will be generated using certified payroll receipts entered through the AASHTOWare Civil Rights & Labor (CRL) system. These reports will be referred to as "CRL reports";
- 2) The CRL reports will be distributed by ODOT's ODI Division or the Project Manager at project progress meetings on a quarterly basis;
- 3) If female and/or minority workforce goals are not being met, ODOT's ODI Division will offer a list of organizations that focus on recruiting a diverse workforce. This list can be used as a resource for the DBT and/or Unions.

A Good Faith Efforts (GFE) check list will be provided to the DBT at the end of the project. (See copy below, pp. 6-9, or on line at: <https://www.transportation.ohio.gov/wps/portal/gov/odot/programs/eeo/01-gfe-checklist>)

- 4) The DBT must complete and return the GFE check list within 30 days of receipt to the Project Manager (PM). The PM will forward the check list to the ODI Outreach Manager (OM) for review.

The OM will forward the check list to ODI Outreach Administrator (OA) who will forward it to the ODI Good Faith Efforts Review Committee for final approval.

- 5) The ODI Good Faith Efforts Review Committee will determine whether the good faith efforts checklist is acceptable within 10 days of receiving the checklist from the DBT or Project Manager and will inform the DBT of the decision.
- 6) If the GFE checklist is not acceptable, the DBT will continue to make efforts to meet the female and minority workforce goals on future projects that ODOT monitors.

ODOT staff that will be involved in determining if GFE checklists are acceptable include:

ODOT Division of Opportunity, Diversity, & Inclusion (ODI) staff	2-4
ODOT District staff (Project Manager and/or Project Engineer)	1-2
ODOT Central Office staff (Office of Construction Administration, Alternative Delivery, & Local Programs)	3

- 7) Additionally, at the end of the project, if the workforce diversity goals are not met, ODOT will meet with the DBT to discuss efforts that the DBT can take to meet the diversity workforce goals on the next project over \$20M awarded to the DBT that will be monitored by ODOT. These discussion efforts will be acknowledged by ODOT and made a part of the DBT overall GFE documentation.
- 8) If the DBT does not meet the female and minority workforce goals on the next project over \$20M that ODOT monitors, a letter will be sent to the CEO of the the DBT and Sub Contractors informing them of their company’s lack of progress in meeting the project’s total workforce utilization goals and inviting the CEO, or his/her representative(s), to talk with ODOT’s leadership regarding any concerns. The minutes from this meeting will be kept on file as a part of the company’s Good Faith Efforts.

Dispute Process

During the life of the project, if there is a disagreement by the DBT with the female and/or minority workforce percentages provided in a CRL report, the DBT can make a request, through the Project Manager, to meet with ODOT ODI staff to discuss discrepancies and obtain more information regarding the process ODOT uses to produce the CRL reports.

Good Faith Efforts Committee

The Good Faith Efforts (GFE) Committee shall be responsible for monitoring and approving the GFE Checklist and supporting documentation submitted by the DBT showing efforts made to meet the female and minority workforce goals on ODOT projects that are being monitored.

The Committee members shall be responsible for:

- 1) Working with the ODI staff to review and approve the GFE check lists submitted by the DBT and informing the DBT if the check list and documentation are approved or not.

- 2) Accessing/ Reviewing CRL reports from the SharePoint portal that shall be created by ODI staff.
- 3) Saving all GFE documentation on the Share Point portal created by the ODI Division.

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**Workforce Diversity Requirements - Good Faith Efforts (GFE) Checklist\***

***\*Please return this form and supporting documentation (when applicable) to the ODOT project manager within 30 days of receipt.***

- ❖ This note outlines the Affirmative Action and Equal Opportunity requirements for the federal and state funded transportation projects over \$10,000. As a part of these requirements, there are workforce goals for female and minority workers. ODOT is renewing its efforts to monitor these goals. There is a statewide goal of 6.9% for female workers on all projects over \$10,000 and the goal for minority workers varies by county. The DBT is required to meet the goals by the end of project.
- ❖ The DBT is required to complete and return this Good Faith Efforts (GFE) Checklist (including information for subcontractors when possible) as indicated above. When the GFE Checklist is received, the Project Manager and/or Regional Outreach Manager will inform The DBT within 30 days if the GFE check list is approved by the GFE Review Committee and discuss additional steps that can be taken to meet the workforce diversity goals (if applicable).
- ❖ ODOT’s ODI Division (Office of Outreach) will be responsible for monitoring progress toward meeting the workforce diversity goals.

[In the following sections- check all that apply, including  Prime Contractor and/or  Subcontractor(s)]

**Outreach events:**

In the past three months, the DBT attended outreach/recruiting events to increase women, minorities, and disadvantaged persons in the workplace. [Please provide a copy of documentation of at least one of these outreach efforts with this form].

**Outreach contacts:**

Which agencies, professional/trade groups, job fairs, training classes, minority and women organizations, workforce development agencies were contacted by the The DBT in order to recruit minorities, women and disadvantaged persons in the workplace? Use additional paper if needed. Provide approximate dates and names of individuals contacted through this process.

**Current employees:**

The DBT has connected with current minority and female employees to gain referrals on other minority and female applicants.

**Company recruitment efforts:**

The DBT has maintain a database/ spreadsheet/ list of minority, female, and disadvantaged applicants who want to work at the company and applied for employment in the past. The database was utilized to contact those applicants when hiring/ employment opportunities arose. [Please provide a copy of the list with this form- without private or confidential information.]

The aforementioned database/ list includes women and minorities referred by unions, community organizations, schools, workforce development agencies, and other recruitment sources.

The DBT informed the aforementioned recruitment partners when employment opportunities arose.

The DBT sought to include qualified minorities and women in any apprenticeship programs in which the contractor participates.

The DBT have advertised in news media oriented towards women and minorities.

The DBT reached out to their subcontractor(s) to vet the subcontractors' ability to hire women and minority workers, before the project began or as the project progressed.

**Request to union hall:**

If the DBT are unionized and did not meet the female or minority workforce goal, the union hall was informed of the short fall and a request was made to the union hall for female and minority workers.

The DBT documented if an individual was sent to the union hiring hall for referral and was not referred back to the contractors by the union or was not hired by the contractors; and the reason why.

**The criteria ODOT will use to determine if GFEs are sufficient include the following:**

- o The extent that women and minorities are available within a reasonable area of recruitment
- o The potential resources for effective recruitment
- o Type of work
- Geographic location of project
- Duration of the contract
- Dollar value of the contract

Feel free to attach an additional document if more space is needed to note Good Faith Efforts that have been used or will be used:

[Empty rectangular box]

**Person completing this form (name, company, and title)**

***I certify that the information provided on this form and supporting documentation (when applicable) is true and correct to the best of my knowledge.***

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

Signature: \_\_\_\_\_ Company Name: \_\_\_\_\_

\_\_\_\_\_ Position/Title:

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

**\*\* Please note that this checklist is subject to revisions over time, as updates are needed\*\***

**For office use only:** GFE Checklist approval/ denial by ODOT

Regional Outreach Manager Name _____	Project Manager Name _____
<input type="checkbox"/> Approve GFE Checklist  <input type="checkbox"/> Do not approve (request additional documentation)	<input type="checkbox"/> Approve GFE Checklist  <input type="checkbox"/> Do not approve (request additional documentation)

ODOT ODI Deputy Director Name _____ (if applicable)	ODOT ODI Administrator Name _____ (if applicable)
<input type="checkbox"/> Approve GFE Checklist  <input type="checkbox"/> Do not approve (request additional information)	<input type="checkbox"/> Approve GFE Checklist  <input type="checkbox"/> Do not approve (request additional information)

Committee Member, ODI Administrator Name _____ (if applicable)	Committee Member, Central Office Staff Name _____ (if applicable)
----------------------------------------------------------------------	-------------------------------------------------------------------------

<input type="checkbox"/> Approve GFE Checklist	<input type="checkbox"/> Approve GFE Checklist
<input type="checkbox"/> Do not approve (request additional information)	<input type="checkbox"/> Do not approve (request additional information)

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Exhibit O: Notice of Requirement of Affirmative Action to Ensure  
Equal Employment Opportunity and Workforce Diversity Requirements  
on all ODOT Administered Federally Funded Projects

ODOT, Central Office Staff Name _____(if applicable)	ODOT, Central Office Staff Name _____(if applicable)
<input type="checkbox"/> Approve GFE Checklist <input type="checkbox"/> Do not approve (request additional information)	<input type="checkbox"/> Approve GFE Checklist <input type="checkbox"/> Do not approve (request additional information)
ODOT ODI Staff Name _____(if applicable)	ODOT ODI Staff Name _____(if applicable)
<input type="checkbox"/> Approve GFE Checklist <input type="checkbox"/> Do not approve (request additional information)	<input type="checkbox"/> Approve GFE Checklist <input type="checkbox"/> Do not approve (request additional information)
ODOT ODI Staff Name _____(if applicable)	ODOT ODI Staff Name _____(if applicable)
<input type="checkbox"/> Approve GFE Checklist <input type="checkbox"/> Do not approve (request additional information)	<input type="checkbox"/> Approve GFE Checklist <input type="checkbox"/> Do not approve (request additional information)

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## EXHIBIT P: ON-THE-JOB TRAINING PROGRAM

The primary objective of the OJT Program is to offer equal opportunity for the training and upgrading of minorities, women, and disadvantaged persons toward journeyman status in the highway construction trades, and to establish a plentiful and well diverse pool of skilled workers for the highway construction industry.

The DBT shall adhere to all requirements of the OJT Program as set forth in the most recent version of the ODOT On the Job Training Program Plan located at the link below, and incorporated in its entirety herein by reference.

<http://www.dot.state.oh.us/Divisions/ODI/SDBE/OJTDocs/OJT%20Program%20Plan.pdf>

## EXHIBIT Q: PROMPT PAYMENT – ODOT LET CONSTRUCTION PROJECTS

Prompt payment requirements including prompt and full payment of retainage apply to the Department and, by extension, the Contractor and all tiers of Subcontractors (including DBEs and non-DBEs and including traditional Subcontractors as well as Material Suppliers and trucking firms, collectively referred to herein as Subcontractors). The State of Ohio's laws related to prompt payment and retainage are published in Ohio Revised Code (ORC) 4113.61. ORC 4113.61 applies to all contracts. The DBT must comply with this Exhibit Q, ORC 4113.61, Section 8.7 (Affiliate Subcontracts) of the PDBC and, for contracts with U.S. Department of Transportation financial assistance (i.e., federally-funded contracts), Title 49, Part 26, Section 29 of the Code of Federal Regulations (CFR) (i.e., 49 CFR 26.29).

The Department monitors the payments made by the Contractor and Subcontractors for compliance with this Exhibit Q, ORC 4113.61, Section 8.10 (Prompt Payment) of the PDBC and, for federally funded contracts, 49 CFR 26.29. To facilitate this monitoring, the Department requires the Contractor to report their remitted payments to specified Subcontractors, and Subcontractors to report their remitted payments to specified lower-tier Subcontractors, as follows.

- The Contractor must report remitted payments to subcontractors (DBE and non-DBE), suppliers (DBE only, unless the supplier sublets to a lower-tier DBE firm), and trucking firms (DBE only, unless the trucking firm sublets to a lower-tier DBE firm) (collectively, Subcontractors).
- Subcontractors must report remitted payments to lower-tier subcontractors (DBE and non-DBE), suppliers (DBE only), and trucking firms (DBE only) (collectively, "Lower-tier Subcontractors").

The Contractor must report remitted payments to Subcontractors within 10 calendar days of each payment it receives from the Department. Each Subcontractor must report remitted payments to Lower-tier Subcontractors within 10 calendar days of receipt of each payment received from the Contractor. Payers must report return of retainage (and/or other amounts withheld) within 10 calendar days of release to the payee.

The payer (whether Prime Contractor or Subcontractor) must report the following information:

- 1.) The name of the payee;
- 2.) The dollar amount of the payment to the payee;
- 3.) The date the payee was paid; and
- 4.) The retainage or other amount withheld (if any), and the reason for the withholding (if other than for retainage).

Payment reporting(s) must be both gross (i.e., the amount owed without factoring in retainage and/or other amounts being withheld) and net. The payer must report its return of retainage (and/or other amounts withheld) in separate, standalone payment entries (i.e., without being commingled with a payment for work performed or materials supplied).

Payees must verify each payment reported by a payer within 10 calendar days of the payment being reported by the payer. This verification includes whether the payment was received, and if so, whether it was as expected or not.

The Contractor must include the above prompt payment, retainage and reporting requirements in all Subcontractor (DBE and non-DBE), supplier (DBE only, unless the supplier sublets to a lower-tier DBE firm), and trucking firm (DBE only, unless the trucking firm sublets to a lower-tier DBE firm) agreements that it enters into and further require that all such subcontractors include the same prompt payment, retainage and reporting obligation in their lower-tier Subcontractor (DBE and non-DBE), supplier (DBE only), and trucking firm (DBE only) agreements.

Note: Payments made to non-DBE suppliers and trucking firms need not be reported. However, as required in C&MS 107.21 and in accordance with ORC 4113.61, contractors are required to make payment to each subcontractor and supplier within 10 calendar days after receipt of payment from the Department for work performed or materials delivered or incorporated into the project—this requirement includes non-DBE suppliers and trucking firms. If a contractor does not comply with this requirement, penalties in accordance with ORC 4113.61 may apply.

### **SUGGESTED SUB AGREEMENT LANGUAGE – FEDERAL-AID CONTRACTS**

Suggested language for the federal-aid Contractor to include in its subcontractor agreements:

*As a Subcontractor, supplier\* and/or trucking firm\*, you (the payee) must verify receipt of payments from the Contractor. You must verify each payment within 10 calendar days of the payment being reported by the Contractor. This verification includes whether the payment was received, and if so, whether it was as expected or not. Furthermore, you must report payments to your lower-tier Subcontractors (DBE and non-DBE), suppliers (DBE only), and trucking firms (DBE only). The payment data reported must include any retainage (and/or other amounts) withheld and any previously withheld amounts released. You must report payments within 10 calendar days of receipt of each payment received from the Contractor. You must also report return of retainage (and/or other amounts withheld) within 10 calendar days of release to the payee. Your payees must then verify each payment reported by you (the payer) within 10 calendar days of the payment being reported. Your lower-tier Subcontractor (DBE and non-DBE), supplier (DBE only), and trucking firm (DBE only) sub agreements must include this prompt payment, retainage and reporting obligation.*

Suggested language for the subcontractor to include in its lower-tier sub agreements:

*As a lower-tier subcontractor (DBE or non-DBE), supplier (except non-DBE) and/or trucking firm (except non-DBE), you (the payee) must verify receipt of payments from the payer (i.e., the maker of this sub agreement with you). Payees must verify each payment reported by the payer within 10 days of the payment being reported. This verification includes whether the payment was received, and if so, whether it was as expected or not.*

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

### **PROMPT PAYMENT**

Failure by the Contractor to follow Prompt Payment requirements may result in the issuance of sanctions listed below. The Contractor may also receive the below sanctions if any of their Subcontractors fail to follow Prompt Payment requirements.

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the Contractor (applies if there is a failure to report payments and/or failure to timely pay subcontractor(s)).
- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the subcontractor(s) that was not reported or paid (applies if there is a failure to report payments and/or failure to timely pay subcontractor(s)).
  - If a Contractor receives a 1<sup>st</sup> Level Occurrence reprimand for a project, all subsequent Prompt Payment violations on that project (same or different subcontractor) may result in withholding. In this situation, no 1<sup>st</sup> Level Occurrence reprimand letters will be sent.
- 3rd Level Occurrence: The Contractor may be required to pay interest in the amount of 18 percent per annum of the payment due, beginning on the eleventh day following the receipt of payment from the owner and ending on the date of full payment of the payment due plus interest (applies if a pattern of not paying subcontractor(s) persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation and/or debarment).

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The Contractor's past project practices;
- The magnitude and the type of offense;
- The degree of the Contractor's culpability;
- Any steps taken to rectify;
- The Contractor's record of performance on other projects; and
- The number of times the Contractor has been previously sanctioned by ODOT.

### **RETURN OF RETAINAGE**

Failure by the Contractor to follow Return of Retainage requirements may result in the issuance of sanctions listed below. The Contractor may also receive the below sanctions if any of their Subcontractors fail to follow Return of Retainage requirements.

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the Contractor (applies if there is a failure to report retainage being held and/or failure to timely return retainage).
- 2nd Level Occurrence: The Department may withhold an estimate in the amount of retainage due to the subcontractor(s) (applies if there is a failure to report retainage being held and/or failure to timely return retainage).

- If a Contractor receives a 1<sup>st</sup> Level Occurrence reprimand for a project, all subsequent Return of Retainage violations on that project (same or different subcontractor) may result in withholding. In this situation, no 1<sup>st</sup> Level Occurrence reprimand letters will be sent.
- Repeat Occurrences: Continued non-compliance is a material breach of contract and will be treated as such. The Department can pursue other remedies available by law including suspension, revocation and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- The Contractor's past project practices;
- The magnitude and the type of offense;
- The degree of the Contractor's culpability;
- Any steps taken to rectify;
- The Contractor's record of performance on other projects; and
- The number of times the Contractor has been previously sanctioned by ODOT.

**EXHIBIT R: Reserved**

DRAFT 1-5-2024

**EXHIBIT S: Reserved**

DRAFT 1-5-2024



## EXHIBIT T: CRITICAL PATH METHOD PROGRESS SCHEDULE

### 1.1 Section Includes

- 1.2 General
- 1.3 Quality Assurance
- 1.4 Interim, Phase 1, and Phase 2 Baseline Schedule Requirements
- 1.5 Monthly Progress Update Schedules
- 1.6 Buildable Unit Phase Submission Schedules
- 1.7 Revision and Delay Schedules
- 1.8 Weather Delay Schedules
- 1.9 Recovery Schedules
- 1.10 Float
- 1.11 Progress Schedule
- 1.12 As Built Schedule and Documentation
- 1.13 Other Schedule Submittal Requirements

### 1.2 General

The Contractor shall plan and schedule the project and report progress to the Department. The Contractor shall provide the schedule using the Critical Path Method (CPM). The Contractor shall utilize Primavera P6 software. The Department's acceptance of any schedule, whether interim, baseline, update or revised, shall not modify the Contract Documents nor constitute endorsement or validation by Department of the Contractor's logic, activity durations nor assumptions in creating the schedule. By accepting the schedule, the Department does not guarantee that the Project can be performed or completed as scheduled.

Schedules shall represent a practical plan to design, procure, construct, and complete the Work within the applicable Milestone Deadlines and shall convey Contractor's intent in the manner of prosecution and progress of the Work. The submittal of schedules shall be understood to be the Contractor's representation that the schedule meets the requirements of the Contract Documents and that the Work will be executed in the sequence and duration indicated in the schedule.

### 1.3 Quality Assurance

- A. Scheduler: Contractor's personnel or Specialist Consultant specializing in CPM scheduling with five years minimum experience in scheduling construction work of complexity comparable to this Project, and having use of computer facilities capable of delivering detailed graphic printouts and electronic files within 48 hours of request. The Contractor shall designate a Schedule Representative at the post award kick off meeting who shall be responsible for coordinating with the Department and its representatives during the preparation and maintenance of the schedule.

## 1.4 Interim, Phase 1, and Phase 2 Baseline Schedule Requirements

### 1.4.1 Interim Baseline and Baseline Schedules

#### A. Definitions:

1. **Baseline Schedule:** The Baseline represents the contractor's intended plan for prosecuting the Work depicted in the contract documents. The baseline is the reference to which actual progress, delays, and/or acceleration will be compared. The baseline is intended to be the schedule used to plan, organize, and execute the Work, record and report actual performance and progress, aid to evaluate time extensions, and show how the Contractor plans to complete all remaining Work as of the end of each progress reporting period, and to enable Department to monitor, compute the value of progress payments and evaluate Work progress.
2. **Interim Baseline Schedule:** The Interim Baseline Schedule represents the Sub-Phase 1A Work of the contractor's intended plan for prosecuting the work depicted in the contract documents. The Interim Baseline Schedule acts as a short term planning and schedule monitoring tool while the Phase 1 Baseline Schedule is being developed.

#### B. Schedule Levels:

1. For the purposes of this Exhibit T, Schedule Levels shall be defined as follows:
  - i. Level 1 - The Project Level: includes the project name.
  - ii. Level 2 – The Phase Level: Includes Sub-Phase 1A, Sub-Phase 1B, and Phase 2 Work
  - iii. Level 3 - The Work Breakdown Level: Includes each Buildable Unit of the project (Phase 2 Work only).
  - iv. Level 4 - Work Element Level: Includes high level activities for each Buildable Unit. Examples include: perform excavation, install footings, install piers, install structure, place deck, etc.
  - v. Level 5 - The Activity Level: Further details the Level 4 activities for each Buildable Unit to discrete and measurable activities. Examples related to a Level 4 "install footing" activity would include excavate footing, install formwork, reinforce footing, place concrete, cure footing, and strip formwork. Level 5 activities shall comply with the 20-Day maximum duration of this Exhibit T.

#### C. Interim, Phase 1, and Phase Baseline Development Overview:

1. Interim Baseline Schedule Submittal:
  - i. The Contractor shall submit within 15 days of the Sub-Phase 1A NTP an Interim Baseline Schedule depicting the Sub-Phase 1A Work, and include recommended Milestones and Completion Deadlines for Phase 1 and Phase 2 no later than the specified Contract Completion Time for Department's review and approval.
  - ii. The Interim Baseline Schedule shall include the phases as described in Section 1.4.1.C.2 (Design Phase) below.
  - iii. The Contractor shall provide an updated Interim Schedule with its Base Design Submittal Package, including all activities and Milestones for the entirety of the Phase 1 Work. The schedule shall incorporate past feedback from Department

and include recommended Milestones and Completion Deadlines no later than the specified Contract Completion Time.

- iv. The Contractor shall provide a draft Phase 1 Baseline Schedule within 80 Days of the Department's acceptance of the Interim Schedule. The draft Phase 1 Baseline Schedule shall include detailed activities and Milestones for the entirety of the Phase 1 Work and shall include a summary of the major activities, phases, and Milestones of the Phase 2 work.

2. Design Phase:

- i. For the Interim, Phase 1, and Phase 2 Baseline Schedules, the design phase shall be a Level 5 schedule per Section 1.4.1.B.1.v (Schedule Levels) of this Exhibit T.
- ii. The schedule shall include all phase submissions according to the scope of work, along with all applicable review times.

3. Construction Phase:

- i. For the Interim Baseline Schedule, construction activities outside of Sub-Phase 1A Work shall show Level 3 activities, per Section 1.4.1.B.1.iii (Schedule Levels) of this Exhibit T, summarizing major elements and Buildable Units.
- ii. For the Interim Baseline Schedule, any construction activities following Sub-Phase 1B NTP shall be detailed to Level 4 activities and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.
- iii. For the Phase 1 Baseline Schedule, all construction activities prior to Sub-Phase 1B NTP and where there are no Released for Construction (RFC) plans shall be detailed to Level 4 activities and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.
- iv. For the Phase 1 Baseline Schedule, all construction activities shall be detailed to Level 5 activities and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.
- v. For the Phase 2 Baseline Schedule, all construction activities where there are no RFC plans shall be detailed to Level 4 and comply with Section 1.4.1.E (Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules) below.

D. Interim, Phase 1, and Phase 2 Baseline Schedule Workflow:

1. Interim Baseline:

- i. The Interim Baseline Schedule shall include the design phase as indicated in Section 1.4.1.C.2 (Design Phase).
- ii. Construction Phase work shall be included as indicated in Section 1.4.1.C.3 (Construction Phase).
- iii. Revisions to the Interim Baseline Schedule will not be permitted after the Department's acceptance that affect the activity ID's, activity descriptions, relationships, or durations.
- iv. Following the Department's acceptance, the Interim Baseline Schedule shall be updated as per Section 1.5 (Monthly Progress Update Schedules) with actual

progress up to the point that the Phase 1 Baseline is accepted.

- v. The activities in the Interim Baseline Schedule shall correlate directly with the cost loaded schedule per PDBC Section 11.4 (Phase 1 Estimates and Payments) and PDBC Section 11.2 (Compensation for the Sub-Phase 1A Work) from which Progress Payments will be based (for Sub-Phase 1A activities only) until the Phase 1 Baseline is accepted by the Department.
  - vi. Time impacts or weather impacts shall be applied to the Phase 1 Baseline Schedule per Sections 1.6 (Buildable Unit Phase Submission Schedules) and 1.7 (Revision and Delay Schedules), once accepted, until after the Phase 2 Baseline is accepted.
2. Phase 1 Baseline Schedule:
- i. The Phase 1 Baseline Schedule shall be developed according to Sections 1.4.1.C.2 (Design Phase) and 1.4.1.C.3 (Construction Phase).
  - ii. The Phase 1 Baseline shall include the Interim Baseline Schedule as accepted by the Department and shall be a continuation of the logic and plan developed in the interim phase.
  - iii. Any changes made to the Interim Baseline Schedule and included in the Phase 1 Baseline Schedule will be grounds for immediate rejection.
  - iv. The Phase 1 Baseline Schedule shall not include any impacts or updates known at the time of submittal. Any/all impacts are to be strictly contained within the Interim Schedule until the Baseline Schedule is accepted by the Department in its entirety.
  - v. Upon acceptance of the Phase 1 Baseline Schedule, all accepted updates applied to the Interim Schedule shall be incorporated into the first Phase 1 Schedule Update.
  - vi. Upon acceptance of the Phase 1 Baseline, any/all known impacts shall be incorporated into the schedule and the use of the Interim Schedule shall be discontinued.
  - vii. The Phase 1 Baseline Schedule shall include a summary of the major activities, phases, and Milestones of the Phase 2 Work.
  - viii. Four Week look ahead bar chart schedule. The four week look ahead bar chart schedule shall include all activities scheduled including: activity ID, description, start and finish, total float, original duration, remaining duration, percent complete, responsible party performing the work and pertinent remarks as to activity status.
3. Phase 2 Baseline Schedule:
- i. The Phase 2 Baseline Schedule shall be developed according to Section 1.4.1.C.2 (Design Phase) and Section 1.4.1.C.3 (Construction Phase).
  - ii. The Phase 2 Baseline shall include the Phase 1 Baseline accepted by the Department and shall be a continuation of the logic and plan developed in the Phase 1 Baseline Schedule.
  - iii. Any changes made to the Phase 1 Baseline Schedule and included in the Phase

- 2 Baseline Schedule will be grounds for immediate rejection.
- iv. The Phase 2 Baseline Schedule shall not include any impacts or updates known at the time of submission. Any/all impacts are to be strictly contained within the Phase 1 Schedule until the Phase 2 Baseline Schedule is accepted by the Department.
  - v. Upon acceptance by the Department of the Phase 2 Baseline Schedule, all accepted updates applied to the Phase 1 Schedule shall be incorporated into the first Phase 2 Schedule Update.
  - vi. Upon acceptance by the Department of the Phase 2 Baseline Schedule, any/all known impacts shall be incorporated into the schedule and the use of the Phase 1 Schedule shall be discontinued.
  - vii. Contractor shall provide Monthly Progress update Schedules based upon the Phase 2 Baseline Schedule through the end of the Completion of the Contract.
  - viii. Four Week look ahead bar chart schedule. The four week look ahead bar chart schedule shall include all activities scheduled including: activity ID, description, start and finish, total float, original duration, remaining duration, percent complete, responsible party performing the work and pertinent remarks as to activity status.
- E. Setup and Format for Interim, Phase 1, and Phase 2 Baseline Schedules:
1. General Requirements:
    - i. The Contractor shall be responsible for assuring all Work, including all Work performed by Subcontractors, is included in the schedule.
    - ii. The Contractor shall be responsible for assuring that all work sequences are logical and that the schedule indicates a coordinated plan.
    - iii. Show the order and interdependence of activities, with the use of appropriate activity relationships, and the sequence for accomplishing the Work.
    - iv. Where Level 4 detail is required (see [Section 1.4.1.B.1.iv](#) (Schedule Levels)), describe Buildable Units of the Project in enough detail to provide a general overall duration and sequence of the Buildable Unit. Provide logic indicating required interdependencies with other Buildable Units or other required work such as, but not limited to, utility work.
    - v. Where Level 5 detail is required (see [Section 1.4.1.B.1.v](#) (Schedule Levels)), all Level 4 elements shall be broken down into measurable activities which can be identified and tracked by the Department.
    - vi. The Contractor shall provide for and coordinate independent utility work, and/or work provided "by others" into the schedule in such a way as to minimize rework, minimize additional protection of previously installed Work, and in an effort to mitigate delays.
    - vii. The schedule shall include activities, regardless of responsibility, that directly or indirectly relate to or have influence over planning and executing the Work in strict accordance with the Contract Documents, and shall include all design and preconstruction activities, procurement, Contractor's submittals and their forecasted approval dates.

- viii. The Contractor shall be responsible for planning the design and construction of the Project and must consider the Work to be performed, the Contract tie, the resources available, vendors, Subcontractors, external constraints, and other factors affecting the successful completion of the Work.
  - ix. The Contractor shall not be entitled to establish a Claim if the Department disallows Contractor from finishing early.
  - x. The Contractor shall involve and coordinate with all Subconsultants, Subcontractors, third parties, stakeholders, and Material suppliers in the development and updating of schedules.
  - xi. Review, acceptance, or approval of schedules by Department shall not waive any Contract requirements and shall not relieve the Contractor of any obligation or responsibility for submitting complete and accurate information.
  - xii. Failure by the Contractor to include any element of Work required for performance of the Contract shall not excuse the Contractor from completing all Work within the Contract Completion Time.
  - xiii. Acceptance by the Department shall not relieve the Contractor of any of its responsibilities for the accuracy or feasibility of the schedule.
  - xiv. Omissions and errors shall be corrected as described in Section 1.6 (Buildable Unit Phase Submission Schedules) of this Exhibit T and will not entitle the Contractor to an extension of the Contract Completion Time.
2. General Settings:
- i. Calculate the Critical Path as “longest path.”
  - ii. The schedule may only be calculated using retained logic.
  - iii. Show open ends as non-critical.
  - iv. Total Float shall be calculated as finish Float.
  - v. Ignore relationships to and from other projects.
  - vi. Use “Duration” as the activity percent complete type.
3. Calendars:
- i. All calendars shall be Project level calendars, not global or resource calendars.
  - ii. Calendar names should include the ODOT project number and a describing function (i.e. YY-##### - five day w/ holidays and weather, YY-##### - seven day cure, YY-##### - five day asphalt w/ weather).
  - iii. At a minimum, calendars should be established for Department reviews, standard work week, cure/settlement periods, milestones, and any items with temperature restrictions as per the specifications.
  - iv. Seasonal (winter) and environmental shutdown periods shall be shown using non-working calendars.
  - v. Weather and Seasonal Conditions shall be entered into all calendars containing physical work as non-work days per month as per Table T-1 (Weather and Seasonal Conditions Table). Anticipated Days lost due to weather shall be randomly distributed throughout each calendar containing physical work and

should not be tightly grouped or concentrated on particular days within each week.

- vi. All Project Milestones shall be on a seven day/week calendar with no non-work days.
- vii. All review periods for Department shall be included on a designated calendar of five days/week and shall include typical government holidays.
- viii. Anticipated weather and/or shutdown periods shall not be included for any days past the contract completion date. In the event the contract completion date is amended to a later date, weather days will be granted on a day for day basis pending an Accepted Weather Delay Analysis according to Section 1.7 (Revision and Delay Schedules).

**TABLE T-1: WEATHER AND SEASONAL CONDITIONS TABLE**

<i><b>Weather and Seasonal Conditions</b></i>	
<i><b>Month</b></i>	<i><b>Anticipated Days Lost days due to weather</b></i>
January	8
February	8
March	7
April	6
May	5
June	5
July	4
August	4
September	5
October	6
November	6
December	6

- 4. Work Breakdown Structure / Activity Codes:
  - i. The Contractor shall provide an organizational structure consisting of a Work Area, Phase, and Responsibility (at a minimum).
  - ii. The structure shall be formed using project activity codes.
  - iii. A WBS structure may be used, but shall still include the activity codes as

indicated above.

5. Constraints:

- i. Use constraints sparingly in the schedule. Constraints should only be used for contractual Milestones such as the start, interim Milestone Deadlines, Companion Bridge Opening Deadline, and the finish deadlines.
- ii. Constraints should never be used in place of relationship ties. Activities should be split, if necessary, to create logical ties in lieu of constraining activities.
- iii. The start and finish Milestones may contain mandatory start and finish constraints respectively.
- iv. Interim Milestones should use only early or late constraints.

6. Milestones:

- i. Start Project: The Contractor shall include as the first Milestone in the schedule, a Milestone named "Start Project". The date used for this Milestone is the date the Sub-Phase 1A NTP is issued by the Department and shall be constrained to Start On said date.
- ii. End Project Milestone: The Contractor shall include as the last activity in the project schedule, a Milestone named "End Project". The date used for this milestone is considered the project completion date and shall be constrained to Finish On or Before said date.
- iii. Start Phase Milestone: The Contractor shall include as the first activity for a project phase, an activity named "start Phase X", where "X" identifies the phase of work.
- iv. Start Buildable Unit Milestone: The Contractor shall include as the first activity for a Buildable Unit, an activity named "start BU X", where "X" identifies the Buildable Unit.
- v. End Phase Milestone: The Contractor shall include as the last activity in a project phase, an activity named "end Phase X" where "X" identifies the phase of Work, and shall be tied as the predecessor to the Start of the next plan phase Milestone.
- vi. End Buildable Unit Milestone: The Contractor shall include as the last activity in a Buildable Unit, an activity named "end BU X" where "X" identifies the Buildable Unit.
- vii. The Contractor may include additional Milestones but, as a minimum, shall include all contractual Milestones. Milestones added by the Contractor, but that are not contractual Milestones may be tied via activity logic to other activities but cannot be constrained.

7. Activities:

- i. Level 4 Activities shall be included in sufficient detail to represent the contract scope of work and provide for logical sequencing of major work elements of Work packages with Buildable Units and demonstrate a logical, reasonable, workable plan to complete the work on or before the contract completion date.
- ii. Level 5 Activities shall be included in sufficient and traceable detail to indicate the



plan for constructing the major work elements within the Buildable Unit. The activities shall comply with the scope, specifications, and any/all other contract requirements required to construct the project.

- iii. Activity Identification (ID). Assign each activity a unique identification number. The activity ID may contain additional information but is not to exceed 20 characters in total length. Once accepted, the activity ID shall be used for the duration of the Project.
  - iv. Activity Description. Each activity shall have a narrative description consisting of a verb or work function (e.g.; form, pour, excavate) and an object (e.g.; slab, footing, underdrain).
  - v. Assign a planned duration in Working Days for each activity.
  - vi. Assign an appropriate project calendar to each activity in the schedule.
  - vii. Include activities for submittals, Working Drawings, Shop Drawing preparation, Material procurement and fabrication, delivery of Materials, plant, and Equipment, long lead items and other similar activities.
  - viii. Include review activities by the Department with a duration of not less than 10 Working Days on a calendar containing typical government holidays.
  - ix. Do not exceed a duration of 20 Working Days for any construction activity except as follows:
    1. Level 4 activities.
    2. Settlement Periods.
    3. Long Lead Items.
    4. Fabrication Items.
    5. Shop drawing preparation.
    6. Other items upon Acceptance from Department or their Representative.
  - x. Do not represent the maintenance of traffic, erosion control, or any other similar items as single activities extending to the Completion Date. Break these Contract Items into component activities such as initial setup, and/or tear down in order to meet the duration requirements of this Section 1.4.
  - xi. Include activities such as cure times and/or settlement periods as per the applicable specifications.
8. Activity Relationships and Logic:
- i. All activities, except the first activity, shall have a predecessor(s).
  - ii. All activities, except the final activity, shall have a successor(s).
  - iii. All Construction activities shall have a Design Submittal activity as a Predecessor.
  - iv. All Final Design activities shall have a Construction activity as a successor.
  - v. Use only finish-to-start relationships with no leads or lags to link activities, or use start-to-start relationships with lags no greater than the predecessor duration to link activities.

- vi. Use of finish-to-finish relationship is required when both activities are already linked with a start-to-start relationship unless all activities have a successor with a finish to start relationship.
9. Lag:
- i. The use of lag is discouraged and should be used sparingly. Split activities into initial and final stages with appropriate durations to create logical link points in lieu of using lag.
  - ii. Lead is not permitted.
  - iii. Use lags no greater than the predecessor duration.
10. Level of Effort (LOE) Activities:
- i. Use level of effort activities to show the duration of specified contract work periods, phases and road closures.
  - ii. The level of effort activity type is allowed to have a start-to-start relationship with the first activity in a series of activities and a finish-to-finish relationship with the last activity in a series of activities.
  - iii. Level of effort activities shall be included to summarize the overall duration of each Buildable Unit or division of work (Work Package with Buildable Units) for both Level 4 and Level 5 schedules. The LOE activities shall be tied with a SS relationship to the "Start BU X" Milestone and as a FF to the "End BU X" Milestone.
  - iv. As the Project progresses during Sub-Phase 1A and Sub-Phase 1B and additional details are required within the schedule, it is permissible for the Contractor to convert a scheduled activity into a LOE activity. In this instance, the revenue and resources applied to the original scheduled activity will need to be spread amongst the newly added subsequent scheduled activities.
- F. Submission Requirements:
1. Interim Baseline Schedule Submission:
- i. At the pre-design meeting, a formal schedule presentation will be conducted by the contractor describing the elements of the Scope of Work as depicted by the schedule in terms of the design, logic, phasing, Milestones, closures, and Utility Relocations.
  - ii. No Design Submittals shall occur prior to the Department's acceptance of an Interim Baseline Schedule.
  - iii. Furnish an Interim Baseline Schedule to the Department for review at or before the Pre-Design Meeting. The Department will review the schedule and within 14 Days of receipt, will either accept the schedule or provide the Contractor with comments. The Department's acceptance of the schedule does not revise the Contract Documents. Provide clarification or any needed additional information within 10 Days of a written request by the Department. The Department will withhold payment of appropriate amounts in Estimates until the Department accepts the schedule. The Department will not measure or pay for the preparation of the schedule and schedule updates directly. Include the following Administrative Identifier Information:

1. Project Number.
  2. County.
  3. Route Number.
  4. FHWA Number.
  5. PID Number.
  6. Contract Number.
  7. Date of Contract.
  8. Completion Date.
  9. Contractor's Name.
  10. Contractor's Dated Signature.
  11. ODOT's Dated Acceptance Signature.
- iv. Provide a Working Day schedule that shows the various activities of Work in sufficient detail to demonstrate a reasonable and workable plan to achieve each Milestone and complete the Project by the Substantial Completion Deadline. Show the order and the sequence for accomplishing the Work. Describe all activities in sufficient detail so that the Department can readily identify the Work and measure the progress of each activity. The CPM schedule shall reflect the scope of work, design Submittals, Department (and/or other designated agency) Submittal review times, required phasing, Maintenance of Traffic requirements, Milestone Deadlines, the Substantial Completion Deadline, and other Milestones established in the Contract Documents. Include activities for Submittals, Working Drawings and Shop Drawing preparation, Submittal review time for the Department, Material procurement and fabrication, and the delivery of Materials, plant, and Equipment, and other similar activities. The schedule must be detailed on letter or legal sized paper.
- v. Submit per Section 1.4.1.F.3 (General Requirements); additionally, 11x17 schedule hard copies and 8.5x11 copies of the narrative shall be provided and distributed by the Contractor at the pre-design meeting.
2. Baseline Schedule Submission:
- i. The Contractor shall provide a draft Phase 1 Baseline Schedule within 80 Days of the Department's acceptance of the Interim Schedule. At the pre-construction meeting, a formal schedule presentation shall be conducted by the Contractor describing the elements of the Scope of Work as depicted by the schedule in terms of the design, logic, phasing, Milestones, closures, and Utility Relocations.
  - ii. No physical construction work shall commence prior to "Acceptance" of a Phase 2 Baseline schedule.
  - iii. Submit per Section 1.4.1.F.3 (General Requirements).
3. General Requirements:
- i. Submit all schedules within the time frames specified.
  - ii. Provide an electronic .xer or .xml file (to be determined by the Department) prepared in Primavera P6 software manufactured by Oracle.

- iii. Provide an electronic .pdf print out of the full schedule, displaying the Gantt Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date, and Total Float.
- iv. Provide a written schedule narrative in .pdf format describing the following:
  - 1. Current schedule interim Milestone dates and Completion Deadlines.
  - 2. A general description of the Critical Path.
  - 3. Current delays.
  - 4. Anticipated delays.
- v. Name the .xer or .xml file as follows:

**TABLE T-2: SCHEDULE FILENAME CONVENTION**

<i>Progress Schedule</i>	<i>1<sup>st</sup> Submission</i>	<i>2<sup>nd</sup> Submission</i>	<i>3<sup>rd</sup> Submission</i>
<b>Interim Schedule</b>	YYPPPP01IS	YYPPP02IS	YYPPPP03IS
<b>Phase 1 Baseline Schedule</b>	YYPPPP011B	YYPPPP012B	YYPPPP013B
<b>Phase 2 Baseline Schedule</b>	YYPPPP021B	YYPPPP022B	YYPPPP023B
<b>Schedule Update #1</b>	YYPPPP01SU01	YYPPPP02SU01	YYPPPP02SU01
<b>Schedule Update #2</b>	YYPPPP01SU02	YYPPPP02SU02	YYPPPP03SU02
<b>Delay Analysis</b>	YYPPPP01TIA01	YYPPPP02TIA01	YYPPPP03TIA01
<b>Weather Delay Analysis</b>	YYPPPP01WD01	YYPPPP02WD01	YYPPPP03WD01
<b>Recovery Schedule</b>	YYPPPP01RS01	YYPPPP02RS01	YYPPPP03RS01
<b>Revision Schedule</b>	YYPPPP01RV01	YYPPPP02RV01	YYPPPP03RV01
<b>Buildable Unit Phase Submission</b>	YYPPPP01BU01	YYPPPP02BU01	YYPPPP03BU01
<b>Note: YY – Project Year PPPP – Project Number</b>			

G. Interim Baseline and Baseline Schedule Review:

1. Interim Baseline Schedule Review:

- i. The Interim Baseline Schedule shall be presented by the Contractor, as a formal presentation, at the pre-design meeting and will be discussed as a part of said meeting.
- ii. The Interim Baseline Schedule will be accepted or rejected by the Department within 14 Days. Upon its acceptance, the Phase 1 Baseline Schedule shall adopt the same interim schedule data and no changes to such data will be permitted.
- iii. If the schedule is rejected the Contractor shall revise the schedule and resubmit within seven Days. The re-submission of the schedule shall occur at a schedule meeting.
- iv. The Department shall have seven (7) Working Days to review the resubmission of the Interim Baseline Schedule.
- v. The Department is entitled to withhold payment associated with Estimates until

the Interim Baseline Schedule is accepted.

2. Phase 1 Baseline Schedule Review:

- i. The Draft Phase 1 Baseline Schedule shall be presented by the Contractor, as a formal presentation, no later than five (5) Working Days after the Department's receipt of the draft Phase 1 Baseline Schedule Submittal. This meeting will serve as the Contractor's meeting to review, explain, and discuss the Phase 1 Baseline Schedule with the Department. The Department reserves the right to invite any Department staff or representatives deemed necessary for this meeting. Additional meetings may be held between the Department, the Contractor, the Contractor's Scheduler, and applicable Major Subcontractors and Suppliers to resolve any conflicts between the Contractor's Phase 1 Baseline Project Schedule and the intent of the Contract.
- ii. The Contractor shall submit the draft Phase 1 Baseline Schedule to the Department within 80 Days of acceptance of the Interim Baseline Schedule.
- iii. The review of the Phase 1 Baseline Schedule shall commence the day after it is received by the Department and shall span twenty-one (21) Working Days (excepting holidays) in which the Department will either accept, reject, or accept as noted the Phase 1 Baseline Schedule.
- iv. If the Phase 1 Baseline Schedule is "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within seven Days. Revisions to the Phase 1 Baseline Schedule beyond those requested by the Department as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
- v. If the Phase 1 Baseline Schedule is "rejected", the Department will indicate in writing all portions of the schedule that are not in compliance with the Contract Documents. The contractor and the Contractor's Schedule Representative shall attend a meeting with the Department within five (5) Working Days of the Department's Notice. The purpose of this meeting is to resolve all issues with the baseline schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for the Department to "Accept" the baseline schedule.
- vi. Acceptance of the Phase 1 Baseline Schedule does not revise the Contract Documents. The Department will not commence the evaluation of any Claim for extension of time until the Phase 1 Baseline Schedule has been "Accepted" or "Accepted as noted" by the Department.
- vii. The Schedule will be used to negotiate various components of the Contract and will be used as a basis for developing a detailed Phase 2 Baseline Schedule during the Sub-Phase 1B Work.

3. Phase 2 Baseline Schedule Review:

- i. Provide a Phase 2 Baseline Schedule with the Phase 2 Proposal for the Department's review and acceptance.
- ii. The Department will review and respond to the Phase 2 Baseline Schedule Submittal within twenty-one (21) Working Days (excepting holidays).
- iii. The Contractor shall schedule a meeting to review the Phase 2 Baseline

Schedule Submittal no later than five Working Days after Department's receipt of the Phase 2 Baseline Schedule Submittal. This meeting will serve as the Contractor's meeting to review, explain, and discuss the Contractor's Baseline Schedule with the Department. The Department reserves the right to invite any representatives deemed necessary for this meeting. Additional meetings may be held between Department, Contractor, Contractor Scheduler, and all major Subcontractors and Suppliers to resolve any conflicts between Contractor's Baseline Project Schedule and the intent of the Contract.

- iv. Department will review and make comments on the Contractor's Phase 2 Baseline Schedule. Comments made by Department on Contractor's schedule, during review, will not relieve the Contractor from compliance with the requirements of the Contract Documents. To the extent that there are any conflicts between the accepted Phase 1 Baseline Schedule and the requirements of the Contract Documents, the Contract Documents shall govern.
- v. The Contractor's Scheduler, and all Major Subcontractors and Suppliers shall be required to participate in all meetings necessary to reach mutual agreement and the Department's acceptance of the Contractor's Phase 2 Baseline Schedule.
- vi. The Department will Accept, Accept as noted, or reject in writing Contractor's Submittal within twenty-one (21) Working Days (excepting holidays).
- vii. If the Phase 2 Baseline Schedule is "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within seven Days. Revisions to the Phase 2 Baseline Schedule beyond those requested by the Department as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
- viii. If the Phase 2 Baseline Schedule is "rejected", the Department will indicate in writing all portions of the schedule that are not in compliance with the contract requirements. The Contractor and the Contractor's Schedule Representative shall attend a meeting with within five (5) Working Days of the Department's Notice. The purpose of this meeting is to resolve all issues with the baseline schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for the Department to "Accept" the baseline schedule.
- ix. Upon the Contractor's successful development of the Phase 2 Baseline Schedule, the schedule will be accepted by the Department. The Department's acceptance is solely acknowledgement that the schedule conforms to the requirements of this Exhibit T and other requirements of the Contract Documents. However, acceptance by the Department does not relieve the Contractor from subsequently correcting errors and omissions, Float sequestering logic/duration or any other misrepresentation that may have been included in the approved schedule.

## 1.5 Monthly Progress Update Schedules

### A. Definition:

1. Monthly Progress Update Schedule: The update schedule indicates the actual progress achieved within a given period (i.e. monthly) and the impact of the actual progress on the remainder of the activities in the project. The impacts of actual

- progress to the remaining activities provides for a predictive measure on the future course of the project. The Monthly Progress Update Schedule shall only contain updates to the start, finish, or progress of activities in the schedule from the previous data date to the current data date. No revisions shall be included in a Monthly Progress Update Schedule. The actual progress is compared to the Baseline Schedule, or the latest previously accepted Monthly Progress Update Schedule to ascertain the actual progress of the project.
- B. Monthly Progress Update Schedule Preparation – Interim Schedule:
1. Once the Interim Schedule has been accepted by the Department it shall be updated in accordance with this Exhibit T.
  2. Enter the “Actual Start”, “Actual Finish”, “Remaining Duration”, or “Percent Complete” as appropriate for each activity within the update period.
  3. Any activity with an actual start shall also contain an appropriate percent complete.
  4. Update the data date to the end of the update period.
  5. The Contractor shall provide an updated Interim Schedule on a monthly basis, until a Phase 1 Baseline Schedule has been submitted by the Contractor and accepted by the Department.
- C. Monthly Progress Update Schedule Preparation – Phase 1 and Phase 2 Baseline Schedule:
1. Enter the “Actual Start”, “Actual Finish”, “Remaining Duration”, or “Percent Complete” as appropriate for each activity within the update period.
  2. Any activity with an actual start shall also contain an appropriate percent complete.
  3. Update the data date to the end of the update period.
  4. The Contractor shall provide an updated Phase 1 Baseline Schedule on a monthly basis until a Phase 2 Baseline Schedule has been submitted by the Contractor and accepted by the Department.
- D. Submission Requirements:
1. Monthly Progress Update Schedule Submission Deadlines:
    - i. The monthly update period shall begin on the 1<sup>st</sup> day of the month and will terminate on the last day of the month. The Department may adjust these dates as necessary to meet project conditions or other requirements.
    - ii. The Contractor shall submit its Monthly Progress Update Schedule, with a data date of the first day of the month following the update period, no later than the 10<sup>th</sup> of the month, throughout the Completion of the Contract.
    - iii. Submit per Section 1.5.D.2 (General Requirements).
  2. General Requirements:
    - i. Submit all schedules within the time frames specified.
    - ii. Provide an electronic .xer or.xml file prepared in Primavera P6.
    - iii. Provide an electronic .pdf print out of the full schedule, displaying the Gantt Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date,

and Total Float.

- iv. Provide a written schedule narrative in .pdf format describing the following:
  1. Current schedule interim Milestone Deadlines and Completion Deadlines.
  2. A general description of the Critical Path.
  3. Changes or shifts in the Critical Path and the reason for these changes or shifts.
  4. Overall project status (ahead, on, or behind schedule).
  5. Current Delays.
  6. Anticipated Delays.
- v. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).

E. Monthly Progress Update Schedule Review:

1. The Department will review the Monthly Progress Update Schedule within seven Days (excepting holidays) beginning on the first Working Day after the contractor's submission.
2. The Department will review the Contractor's actual dates compared to the project records to verify the accuracy of the information.
  - i. Alternatively, the Department may provide a listing of the schedule activities for the update period along with the recorded dates to the Contractor prior to the update schedule submission.
  - ii. If the Department provides its dates to the Contractor, the Contractor shall provide a disposition on the variance of any dates which are more than three days apart between the recorded dates of the contractor and the recorded dates of the Department.
3. Any discrepancies between the Contractor's recorded dates, and the dates recorded by the Department shall be reconciled before the last day of the month in which the schedule was submitted. Failure to reconcile before the last day of the month in which the schedule was submitted shall be grounds for withholding payment with respect to Estimates.
4. Added work/activities, revisions made to logic, descriptions, calendars or any adjustments that may manipulate the schedule calculations will result in an immediate rejection of the schedule.
5. The Department will not process payments associated with Estimates until the Monthly Progress Update Schedule has been received for the previous period.

## 1.6 Buildable Unit Phase Submission Schedules

A. Definition:

1. Buildable Unit Phase Submission Schedules: The Phase 1 and Phase 2 baseline schedules include a combination of Level 4 and Level 5 detail which would be reasonably understood by the time of the baseline submission. As Buildable Units are completed to a 100 % stage of design, the Level 4 schedule data from the baseline submission will be refined and detailed to a Level 5 schedule for each



Buildable Unit. The Buildable Unit Submission indicates the full and complete schedule for the Buildable Unit along with its logical relationships with other Buildable Units and required work elements. Upon completion of the design of all Buildable Units, all elements of the schedule shall be at Level 5 and shall represent the full and accurate accounting of all activities required to construct all elements of the project.

B. Buildable Unit Phase Submission Overview:

1. Upon Submission of the 100% review plans for each Buildable Unit or group of Buildable Units, a Buildable Unit Phase Submission schedule shall be submitted replacing the Level 4 Buildable Unit details with Level 5 detail. The 100% plan submission design review period will not begin unless the Buildable Unit Phase submission is included.
2. Buildable Unit Phase submissions shall not be permitted to contribute to negative float, nor reduce positive float without the expressed consent of the Department upon review of Buildable Unit Phase submission.

C. Buildable Unit Phase Submission Preparation:

1. The Buildable Unit Phase submission shall be developed using the latest "Accepted" Phase 2 Baseline, or the most recent "Accepted" update schedule.
2. The Buildable Unit Phase Submission Schedule may include a single buildable unit or may cover multiple Buildable Units.
3. No changes shall be permitted to any previously "Accepted" Buildable Units. The submission shall only include details specifically related to the submitted Buildable Unit(s).
4. Buildable Unit Phase Submission schedules shall be submitted as an independent schedule from any revision schedules.
5. Each Buildable Unit shall be inserted into the schedule in such a way that the first activity of the Level 5 schedule utilizes the appropriate predecessors as the first activity of the Level 4 schedule and the last activity of the Level 5 schedule utilizes the appropriate successors of the last activity of Level 4 schedule.
6. The Level 4 information shall remain in the schedule until the Level 5 data is "Accepted" at which time it may be dissolved from the schedule.
7. The Level 5 data shall be constructed according to the applicable requirements of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).

D. Submission Requirements:

1. Buildable Unit Phase Submission Deadlines:
  - i. The Phase submission shall be submitted along with the 100% design review plans. The 100% design review plans will not be accepted by the Department without inclusion of the Buildable Unit Schedule submission.
  - ii. Submit per Section 1.6.D.2 (General Requirements).
2. General Requirements:
  - i. Submit all schedules within the time frames specified.
  - ii. Provide an electronic .xer or .xml file prepared in Primavera P6.

- iii. Provide an electronic .pdf print out of the full schedule, displaying the Gantt Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date, and Total Float.
3. Provide a written schedule narrative in .pdf format describing the following:
  - i. Current schedule interim Milestone Deadlines and Completion Deadlines.
  - ii. A general description of the Critical Path.
  - iii. Changes or shifts in the Critical Path and the reason for these changes or shifts.
  - iv. Overall project status (ahead, on, or behind schedule).
  - v. Current delays.
  - vi. Anticipated delays.
  - vi. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).
- E. Buildable Unit Phase Submission Review:
  1. The Department will review the schedule within ten (10) Working Days (excepting holidays) beginning on the first business day after the Contractor's submission.
  2. Upon "Acceptance" of the Buildable Unit Phase Submission, any all update or impact data shall be transferred to the "Accepted" Phase Submission Schedule and submitted to the Department within five (5) Working Days.

## 1.7 Revision and Delay Schedules

### A. Definition:

1. Delay Schedule: During the course of the project, issues may arise that could not have been anticipated at the Phase 2 Change Order. These issues are entered into a Delay schedule in order to show the impact of the issue on the contractor's schedule. Extra work added by the owner and eligible for a time extension is not considered a delay, but shall be included in a revision schedule.
2. Fragmentary Network (fragnet): A fragnet is defined as the sequence of new activities that are proposed to be added to the existing schedule. The fragnet shall identify the predecessors to the new activities and demonstrate the impacts to successor activities. Alternatively, the fragnet may indicate a sequence of activities that have already happened.
3. Revision Schedule: The Work may require, the Department may request, and/or the Contractor may make revisions to the CPM schedule in order to align the schedule to the physical work in the field and to maintain the predictive nature of the schedule as established in the baseline schedule. Addition of new activities or new calendars or changes to existing activities, calendars or logic constitute a revision. The revision shall incorporate all actualized activities up to the date of the revision. For revisions involving extra work requested by the Department, no time extensions will be granted unless justified in a revision schedule including said work. Any revisions which add or remove activities from the schedule shall be tracked and be submitted with a narrative stating the reason for the addition or deletion of activities. The Department shall review and "approve" or "reject" the revisions. No cost may be added or removed from the schedule, which affects the overall contract value unless accompanied by an approved change order. If activities are added or removed from

the CPM, the Contractor may redistribute cost from like activities to account for cost on the newly added or subtracted schedule activities.

**B. Reasons for Revisions:**

1. The Contractor shall revise the schedule to correct out-of-sequence logic errors that impact the critical path.
2. A revision schedule must be compiled in order to justify any time extension related to extra work.
3. The Contractor may elect to revise the schedule in order to reflect actual/intended prosecution of the work or as per any part of Section 1.7.B.5.(i-v) (Reasons for Revisions) below.
4. Department or their Representative may request a schedule revision when the current schedule does not accurately reflect the current prosecution of the work in order to align the schedule to actual field operations.
5. Department or their Representative may request a schedule revision when the current schedule no longer serves as a predictive tool to plan the course of the project due to:
  - i. Additional or non-performed work.
  - ii. Deviations from the schedule by the contractor's operations.
  - iii. Progress has accelerated or decelerated.
  - iv. There is a general deviation in the planned activity dates as compared to commonly held project knowledge regarding the project's progress.
  - v. Accepted phasing adjustments.

**C. Revision Schedule Preparation:**

1. The basis of any revision or delay schedule shall be the most recently accepted Monthly Progress Update Schedule.
2. Based on the most recently accepted Monthly Progress Update Schedule, revise the schedule to provide a predictive tool reflecting the planned course of the project to achieve the completion of the project by the current contract completion.
3. All revisions shall comply with applicable sections of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).

**D. Delay Schedule Preparation:**

1. Determine project progress prior to circumstance(s) necessitating the time impact analysis. The previous accepted monthly update schedule, updated to the date of the circumstance(s) alleging to have caused delay, shall be used to display the prior progress of the project. This schedule is referred to as the Un-impacted Schedule.
2. In a copy of the Un-impacted Schedule, prepare a new Project activity code for the fragmentary network (fragnet).
3. Prepare a fragnet depicting the circumstance that is believed to have delayed the project within the new activity code.
4. Insert the fragnet into the schedule logic:

- i. The first activity of the fragnet shall be the successor to the last activity that was completed prior to the alleged delay.
    - ii. The last activity of the fragnet shall be the predecessor to the first activity that could not commence due to the alleged delay.
  5. Run the schedule calculations and determine the finish date. This schedule is referred to as the Impacted Schedule.
  6. Compare the impacted Schedule finish date with the un-impacted Schedule finish date in order to determine the duration of any warranted time extension.
- E. Submission Requirements:
  1. Revision Schedule Submission Deadlines.
    - i. Revision schedules shall be submitted with a Monthly Progress Update, or within five (5) Working Days of "acceptance" of a progress update.
    - ii. In the event discrepancies are discovered in the Monthly Progress Update, said discrepancies shall be resolved prior to the submission of the Revision schedule or shall be resolved in both the Monthly Update AND the Revision if submitted simultaneously.
    - iii. Revision schedules resulting from extra work believed to have an effect on the critical path shall be submitted with the cost proposal for the extra work.
    - iv. Revision schedules shall be separated from Buildable Unit Phase Submissions.
    - v. Delay Schedule Submission Deadlines.
    - vi. Delay schedule submissions shall occur within five (5) Working Days of the alleged delay event.
  2. General Requirements:
    - i. Submit all schedules within the time frames specified.
    - ii. Revisions shall be based on the latest accepted Monthly Progress Update. The Revision Schedule shall be submitted with the latest "accepted" Monthly Progress Update in which it was based on.
    - iii. Provide an electronic .xer or .xml file prepared in Primavera P6 for both the Revision schedule as well as the latest "accepted" Monthly Update Schedule.
    - iv. Provide an electronic .pdf print out of the full schedule, displaying the gantt chart, activity ID, activity description, original duration, start date, finish date, and Total Float.
    - v. Provide a written schedule narrative in .pdf format describing the following:
      1. Current schedule interim Milestone Deadlines and Completion Deadlines.
      2. A general description of the Critical Path.
      3. The specific reason(s) for the revision or delay.
      4. Changes or shifts in the critical path and the reason for these changes or shifts.
      5. Overall project status (ahead, on, or behind schedule).

6. Current delays.
  7. Anticipated delays.
  - vii. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).
- F. Revision/Delay Schedule Review:
1. Department or their Representative will review the schedule within ten (10) Working days (excepting holidays) beginning on the first business day after the contractor's submission.
  2. If Department or their Representative does not provide written notification regarding the disposition of the revision schedule within ten (10) Working Days, the submission will be considered Accepted.
  3. For revision schedules that are "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within five (5) Working Days. Revisions to the revision schedule beyond those requested by ODOT or their Representative as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
  4. For revision schedules that are "rejected", ODOT or their Representative shall indicate in writing all portions of the schedule that are not in compliance with the contract requirements. ODOT or their Representative shall conduct a mandatory meeting with the Contractor and the Contractor's Schedule Representative within five (5) Working Days of ODOT or their Representative's written notice. The purpose of this meeting is to resolve all issues with the revision schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for ODOT or their Representative to "Accept" the revision schedule.
  5. Acceptance of the revision schedule does not revise the Contract Documents. The revision schedule shall be "Accepted" or "Accepted as noted" by ODOT or their Representative prior to ODOT or their Representative evaluating any contractor claims associated with time impacts.
  6. Upon acceptance, the revision schedule shall be the basis for evaluations replacing the original baseline logic.

## 1.8 Weather Delay Schedules

### A. Definition:

1. Weather Delay Schedule: The schedule which indicates the effect of the actual weather experienced in a given period as compared to the anticipated weather included in the baseline schedule as depicted in Table T-1 (Weather and Seasonal Conditions Table). The Weather Delay Schedule is a calculation performed by the software after the anticipated weather days have been removed and the actual Weather Days have been inserted into the appropriate calendar.

### B. Weather Delay Schedule Preparation:

1. Make a copy of the previously accepted Monthly Progress Schedule file. This copy is referred to as the Weather Delay Schedule.
2. For the month that incurred actual weather days, remove the anticipated weather only from calendars associated with the work that was delayed and input the actual

- weather days experienced into the Weather Impacted Schedule.
3. Schedule the project WITHOUT changing the data date.
- C. Submission Requirements:
1. Weather Delay Schedule Submission Deadlines.
    - i. The Weather Delay Schedule shall be submitted no later than the 5<sup>th</sup> of the month following the weather impacted work.
  2. General Requirements:
    - i. Submit all schedules within the time frames specified.
    - ii. Submit the weather impacted schedule, and the previously accepted un-impacted Monthly Update Schedule.
    - iii. Provide an electronic .xer or .xml file prepared in Primavera P6 for both schedules.
    - iv. Provide an electronic .pdf print out of the full schedule, displaying the gantt chart, activity ID, activity description, original duration, start date, finish date, and Total Float.
    - viii. Name the .xer or .xml file as per Table T-2 (Schedule Filename Convention).
- D. Weather Delay Schedule Review:
1. Department or their Representative will review the schedule within five(5) Working Days (excepting holidays) beginning on the first business day after the contractor's submission.
  2. Department or their Representative will confirm or dispute the requested weather days and reconcile with the Contractor within the five (5) Working day period.
  3. If warranted, a time extension will be granted for the weather days experienced in the requested month.

## 1.9 Recovery Schedules

### A. Definition:

1. Recovery Schedule: If an update is submitted showing the Companion Bridge Opening Deadline, Substantial Completion Deadline, or Completion of the Contract Deadline more than fourteen (14) calendar days behind schedule, the contractor shall submit a plan of action for recovering the lost time in order to complete the project by the established contract completion date. This plan shall be in the form of a recovery schedule, along with a written narrative.

### B. Recovery Schedule Preparation:

1. Make a copy of the latest submitted Monthly Progress Schedule file. This copy will be used to develop the recovery schedule.
2. Revise the schedule to provide a workable plan for completing the project by the current contract completion date.
3. All revisions shall comply with applicable sections of Section 1.4 (Interim, Phase 1, and Phase 2 Baseline Schedule Requirements).

C. Submission Requirements:

1. Recovery Schedule Submission Deadlines:

- i. The Recovery Schedule shall be submitted no more than five (5) Working Days after the submission of an Update Schedule indicating a completion more than 14 calendar days behind schedule.

2. General Requirements:

- i. Submit all schedules within the time frames specified.
- ii. Provide an electronic .xer or .xml file prepared in Primavera P6.
- iii. Provide an electronic .pdf print out of the full schedule, displaying the Gantt Chart, Activity ID, Activity Description, Original Duration, Start Date, Finish Date, and Total Float.
- iv. Provide a written schedule narrative in .pdf format describing the following:
  1. Current schedule interim Milestone Deadlines and Completion Deadlines.
  2. A general description of the Critical Path.
  3. The specific plan for recovering time to meet the contract completion date.
  4. Changes or shifts in the Critical Path and the reason for these changes or shifts.
- v. Name the .xer or .xml as per Table T-2 (Schedule Filename Convention).

D. Recovery Schedule Review:

1. Department or their Representative will review the schedule within ten (10) Working Days (excepting holidays) beginning on the first business day after the contractor's submission.
2. If Department or their Representative does not provide written notification regarding the disposition of the revision schedule within ten (10) Working Days, the submission will be considered Accepted.
3. For revision schedules that are "Accepted as noted", the Contractor shall make the necessary revisions and resubmit the revised schedule within five (5) Working Days. Revisions to the recovery schedule beyond those requested by Department or their Representative as a part of the "Accepted as Noted" status will be grounds for immediate rejection.
4. For revision schedules that are "rejected", Department or their Representative shall indicate in writing all portions of the schedule that are not in compliance with the contract requirements. Department or their Representative shall conduct a mandatory meeting with the Contractor and the Contractor's Schedule Representative within five (5) Working Days of Department or their Representative's written notice. The purpose of this meeting is to resolve all issues with the revision schedule. At this meeting the Contractor shall provide clarification and all requested information necessary for Department or their Representative to "Accept" the revision schedule.
5. Acceptance of the revision schedule does not revise the Contract Documents. The Recovery schedule shall be "Accepted" or "Accepted as noted" by Department or

- their Representative prior to Department or their Representative evaluating any contractor claims associated with time impacts.
6. Upon acceptance, the revision schedule shall be the basis for evaluations replacing the original baseline logic.
  7. Department will withhold pay applications until Department or their Representative Accepts the Recovery Schedule.
  8. In the event the current Completion Date is in dispute, the recovery schedule will need to be submitted once the dispute has been resolved.

### **1.10 Float**

Use of float suppression techniques, such as; preferential sequencing (arranging critical path through activities more susceptible to Department caused delay), lag logic restraints, zero total or free float constraints, extending activity times, or imposing constraint dates other than as required by the contract, shall be cause for rejection of the project schedule or its updates.

- A. Definitions of Float: Total Float is the length of time along a given network path that the actual start and finish of activity(s) can be delayed without delaying the project completion date. Project Float is the length of time between the End Project Milestone and the Contract Completion Deadline.
- B. Ownership of Float: Float available in the schedule, at any time shall not be considered for the exclusive use of either Department or the Contractor. During the course of contract execution, any float generated due to the efficiencies of either party is not for the sole use of the party generating the float; rather it is a shared commodity to be reasonably used by either party for project issues. Efficiencies gained as a result of favorable weather within a calendar month, where the number of days of normally anticipated weather is less than expected, will also contribute to the Project Float. A schedule showing work completing in less time than the contract time, and accepted by Department, will be considered to have Project Float. No time extensions will be granted nor delay damages paid unless a delay occurs which impacts the project's critical path, consumes all available float and extends the work beyond the Contract Completion Date.
- C. Negative Float: Negative float will not be a basis for requesting time extensions. Any extension of time will be addressed in accordance with the applicable sections of this specification. Scheduled completion date(s) that extend beyond the contract (or phase) completion date(s) may be used in computations for assessment of liquidated damages. The use of this computation is not to be construed as an order by Department to accelerate the project.

### **1.11 Progress Schedule**

Submit an updated progress schedule when requested by the Department. The Department may request an updated progress schedule when progress on the Work has fallen more than fourteen (14) calendar Days behind the latest accepted progress schedule. Information in the updated progress schedule must include a current percentage of completion for each cost loaded schedule activity "% Work completed" value for each activity.



**EXHIBIT U: Reserved**

DRAFT 1-5-2024

**EXHIBIT V: Reserved**

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## EXHIBIT W: PRICE FLUCTUATION CLAUSES

All price adjustment mechanisms which refer to Bid Date shall be interpreted as the execution date of the Phase 2 Change Order.

### **Fuel Price adjustment**

The Department anticipates incorporating within the Phase 2 Change Order a fuel price adjustment mechanism based upon ODOT's PN 520 (07/15/2022)

### **Steel Price Adjustment**

The Department anticipates incorporating within the Phase 2 Change Order a steel price adjustment mechanism based upon ODOT's PN 525 (07/15/2022)

### **Asphalt Binder Price Adjustment**

The Department anticipates incorporating within the Phase 2 Change Order an asphalt binder price adjustment mechanism based upon ODOT's PN 534 (01/21/2022)

### **Portland Cement Price Adjustment**

The Department anticipates incorporating within the Phase 2 Change Order a Portland cement price adjustment mechanism based upon ODOT's PN 540 (10/19/2018)

## EXHIBIT X: DIGITAL DATA FOR MATERIAL TICKETING

### 1. General

This Exhibit X describes the Contractor's responsibilities for transfer of digital data to the Department for asphalt, concrete and aggregate material weight ticket information.

The Contractor shall provide material ticket information in a digital format directly recorded from the material loading source as described below.

This Exhibit X in no way supersedes any other commercial regulations or any other legal requirements regulating the transportation of commercial materials. This does not preclude or dismiss any requirement for paper tickets required by other rules and regulations.

### 2. Requirements

The Contractor shall send digital ticket information to the Department's Digital Ticketing Portal as the individual material loads are generated and shipped to the Project. The digital material ticket ("e-Ticket") shall contain information as required per the applicable material specification for weight measurement and other material characteristics.

The Department will reject any load that does not have a corresponding e-Ticket unless the cause is beyond the Contractor's control, as determined by the Department. In such circumstances, paper tickets may be permitted.

### 3. Setup, Calibration, and Data Integration

The Contractor shall cause Suppliers to cooperate with the Department and the Department's e-Ticketing vendor to establish digital information transfer from the Supplier's ticketing system to the Department's e-Ticketing portal. No earlier than 14 Days after NTP for Construction for any Work Package, but not later than 30 Days prior to initiating Construction Work, the Contractor shall identify in writing the material source load read-out weighing system the Supplier utilizes.

The Contractor shall cause its Suppliers to cooperate with the Ohio Department of Transportation's (ODOT's) e-Ticketing Portal vendor in the creation of an Application Programming Interface (API) to integrate material source load read-out data with the Department's e-Ticketing Portal. The Department's e-Ticketing portal vendor shall be responsible for leading the API creation. Upon API creation, the Contractor shall utilize the API to provide digital material source load read-out data from the material source load read-out weighing system to the Department's e-Ticketing Portal.

The Contractor shall conduct a test of each Supplier's integration with the Department's e-Ticketing Portal prior to shipping material to the Project. Complete test at least 14 days prior to shipping material unless otherwise approved by the Department. The test must involve at least four test e-Tickets from each Supplier approved for used on the Project for materials to be used on the Project. The test e-Tickets must accurately reflect the proper nomenclature and accuracy defined; all other categories shall be marked "TEST". After the Department confirms the test e-Tickets have been entered into the Department's e-Ticket Portal, void the test e-Tickets with the reason "Setup Testing". If any load read-out weighing system changes are intended by the Supplier after the creation of the Supplier-specific API, coordinate with the Department to ensure API compatibility.

The Contractor shall ensure continued internet connectivity during the API usage to maintain connection the Department's e-Ticketing Portal during material production and delivery to the Project. The Contractor shall ensure delivery of e-Ticket prior to the material arriving on the Project, but not prior to the loading of material at the source.

Upon successful testing of the data integration, physical material tickets are not required to be submitted to the Department, but may be necessary for truck drivers per Ohio Revised Code Section 5577.043.

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**EXHIBIT Y: Reserved**

DRAFT 1-5-2024

## EXHIBIT Z: RISK REGISTER

DRAFT 1-5-2024

The project risk register is a preliminary working document. Risk assessment, risk allocation, risk acknowledgement, and potential mitigation measures will continue through project development. Potential mitigation measures listed may or may not be implemented through procurement/project delivery/design/construction. While grouped, the project risk register is not in any order.

Risk Category	Sub-Category	Title	Cause ("Due to")	Risk Description	Effect ("Leads to")	Potential Risk Mitigation Measures	Risk Assignment (Department Risk or Contractor Risk)	Relief/ Provisional Sum Details	Contractor Required Mitigation Efforts	Department Approved Effective Date of Risk Register Event
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Under development

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