

**Sebring Airport Authority
Board Meeting Agenda
May 18, 2023**

1:30 p.m.

**Hendricks Field
Sebring Airside Center**

1. OPENING ITEMS

- a) Call to Order
- b) Pledge of Allegiance and Invocation
- c) Roll Call
- d) Election of Officers
- e) Announcements

Upcoming Meetings & Events

<u>Date</u>	<u>Time</u>	<u>Meeting/Event</u>	<u>Location</u>
5/29/23		Memorial Day – Offices will be Closed	
6/15/2023	1:30pm	SAA/CRA Board Meeting	Hendricks Field Center

2. CONSENT AGENDA

- a) Approve April 2023 Minutes and Invoices

3. MISCELLANEOUS

4. ACTION ITEMS

- a) RFP 23-01 Disaster Debris Removal and Disposal Services – Award and Contracts
- b) RFP 23-02 Disaster Debris Monitoring – Award and Contract
- c) RFP 23-03 Disaster Recovery: Financial Grant Management – Award and Contracts
- d) RFP 23-04 Disaster Recovery: Temporary Emergency Repair and Stabilization – Award and Contracts
- e) Sebring Airport Authority – Board Minutes 11.17.22 – Amendment
- f) Resolution 23-05 Approving Budget Amendment S23-03

CONTINGENT ACTION ITEMS

- g) ARFF Truck

5. EXECUTIVE DIRECTORS' REPORT Added letter of intent

6. BOARD OF DIRECTORS' BUSINESS

7. CONCERNS OF THE PUBLIC

8. EMERGENCY BUSINESS

9. ADJOURNMENT

If a person decides to appeal any decision made by the Board at any meeting or hearing, he will need a verbatim record of the proceedings. The record must include the testimony and evidence upon which the appeal is to be based. Sebring Airport Authority also gives notice that the Chairman is authorized to cancel or postpone any scheduled meeting or hearing by directing the Executive Director to so inform all Board members and any other interested parties and the press. Sebring Airport Authority does not discriminate upon the basis of any individual's disability status. This non-discriminatory policy involves every aspect of the Board's functions, including one's access to, participation in, employment of, or treatment in its programs or activities. Anyone requiring reasonable accommodations as provided for in the Americans with Disabilities Act should contact Beverly K. Glarner, Sebring Airport Authority at 863-314-1301.

Note: Additional staff items may be considered if they come in after the agenda deadline.

**SEBRING AIRPORT AUTHORITY
BOARD MEETING
April 20, 2023**

The Sebring Airport Authority Board of Directors held a scheduled Board Meeting on April 20, 2023, at 1:30 p.m. in person and by telephone-technology conference call. A quorum was met with the following in attendance:

Carl Cool	-	Chairman
Mark Andrews	-	Vice Chairman
Pete McDevitt	-	Secretary
Stanley Wells	-	Asst. Secretary
Craig Johnson	-	Board Member
Terrill Morris	-	Board Member
Brent Ferns	-	Board Member

Also

Mike Willingham	-	Executive Director
Colleen Plonsky	-	Director of Finance
Bob Swaine	-	Swaine, Harris, & Wohl, P.A.
Tim Roland	-	Spring Lake HOA
Craig Sucich	-	AVCON
Kevin McCauley	-	Atkins
Joann Gaskins	-	Career Source Heartland
Robinn Singles, ESQ	-	Spring Lake V4, LLC
John Rousch	-	Highlands County School Board
Eric Menger	-	Hanson, Inc.
Julie Fowler	-	CliftonLarsonAllen, LLP
John Haviland	-	Sebring Raceway Garages
John Gose	-	Sebring Raceway Garages
Nathen Gray	-	Sebring Raceway Garages

1. OPENING ITEMS

- A. Meeting was called to order at 1:30 p.m.
- B. The Invocation and Pledge were led by Bob Swaine.
- C. **Roll Call**
Pete McDevitt, Carl Cool, Terrill Morris, Craig Johnson, Mark Andrews, Stanley Wells and Brent Ferns were present for the meeting.
- D. **Announcements**

2. **CONSENT AGENDA**

Approve the Consent Agenda:

There was a motion by Craig Johnson to approve the Consent Agenda with a second by Pete McDevitt. The motion was passed with aye votes by Cool, Wells, Johnson, Andrews, Ferns, McDevitt and Morris.

3. **MISCELLANEOUS**

Julie Fowler from CliftonLarsonAllen, LLP presented the Annual Financial Audit for the Sebring Airport Authority.

4. **ACTION ITEMS**

A. Taxiway A4 Realignment – E.O. Koch Contract – Change Order #1

This item was presented by Craig Sucich. There was a motion by Pete McDevitt to approve the item with a second by Craig Johnson. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris.

B. DT Foods Lease

This item was presented by Mike Willingham. There was a motion by Stanley Wells to approve the item with a second by Pete McDevitt. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris.

C. Sebring Raceway Garages, LLC – Contract /Restrictions

This item was presented by Bob Swaine. Questions were asked of Bob Swaine about the proposed contract. The Chairman recognized Robinn Singles, ESQ, who presented a letter to address the Board on this item. Mr. Singles stated that he represented Spring Lake V4, LLC and stated his case for the Board to solicit bids for the purchase of real property subject to this agenda item. SAA Directors asked questions of Bob Swaine regarding the comments Mr. Singles had made. Chairman then gave Sebring Raceway Garages, LLC an opportunity to address the Board. Mark Gose spoke on behalf of Sebring Raceway Garages, LLC. Craig Johnson made a motion to table the item with a second from Brent Ferns. When asked, Bob Swaine commented that there was no Board discussion permitted once a motion to table had been made, and Craig Johnson and Brent Ferns then rescinded the motion to table and second. Chairman Carl Cool paused the meeting at 2:20pm so that he could speak with Bob Swaine and Executive Director Mike Willingham in private. The Meeting was continued in session at 2:32pm. There was a motion by Mark Andrews to accept the bid/proposal/contract with Spring Lake Garages, LLC with a second by Craig Johnson. There was discussion about removing the condition of obtaining approval from the City of Sebring for the sale of the property. Mark Andrews amended his motion to accept the contract/proposal from Spring Lake Garages, LLC with the removal of the condition to obtain the City of Sebring's approval for the sale and Craig Johnson seconded that amendment. The amended motion was passed with aye votes by Wells, Johnson, Andrews, Ferns and Morris. Cool and McDevitt abstained.

D. Bella Villa 31 Contract – Cleaning Services

This item was presented by Mike Willingham. There was a motion by Pete McDevitt to approve the item with a second by Terrill Morris. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris.

E. Resolution 23-04 Approving Budget Amendment S23-02

This item was presented by Colleen Plonsky. There was a motion by Craig Johnson to approve the item with a second by Mark Andrews. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris.

F. Interlocal Agreement – Highlands County – Webster Turn Reconstruction

This item was presented by Bob Swaine. There was a motion by Pete McDevitt to approve the item with a second by Stanley Wells. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris.

G. Track Apple – Genesis Products, Inc. – Funder America Document

This item was presented by Bob Swaine. There was a motion by Mark Andrews to approve the item with a second by Stanley Wells. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris.

5. DIRECTOR REPORT

Executive Director Mike Willingham gave his report and Jason Ali updated the Board on Range activities.

6. DIRECTOR'S BUSINESS

Chairman asked for nominations for the seat of Secretary that was vacated by Sid Valentine. Stanley Wells nominated Pete McDevitt for Secretary. Hearing no more nominations Chairman closed the nominations. Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris were aye votes for Pete McDevitt to hold the seat of Secretary.

Chairman asked for nominations for the two expiring terms of Terrill Morris and Mark Andrews. Stanley Wells nominated Terrill Morris, Gary Germaine, Mark Andrews and Jeffrey Daff. There was a motion by Pete McDevitt to approve the nominations with a second by Craig Johnson. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, Ferns and Morris. Chairman directed Executive Director to send nominations to the City of Sebring for consideration.

7. CONCERNS OF THE PUBLIC

8. ADJOURNMENT

Chairman adjourned meeting at 3:07pm.



Mike Willingham, Executive Director

5-18-23

Approved by Board

Invoices Paid in April 2023 Presented in May 2023 Board Meeting

DATE	SAA/FBO - PAID INVOICES	AMOUNT	DESCRIPTION
04/04/23	A1 Extreme Cleaning	\$1,300.00	SAA/FBO: April 2023 Cleaning in Terminal Building
04/04/23	APTIM Environmental & Infrastructure	\$3,901.25	SAA: Professional Services for Disaster Recovery & Grant-Hurricane IAN
04/04/23	CliftonLarsonAllen	\$9,155.42	SAA: Final Billing for 2021-2022 Audit
04/04/23	Copy Life	\$196.54	SAA/FBO: March 2023 Copies
04/04/23	The Howard E Nyhart Company	\$1,500.00	SAA: Professional Services - GASB 75 OPEB Report
04/06/23	Victor Alaniz dba Waterboys Detailing	\$70.00	SAA: Detailing of Airport Vehicles
04/11/23	Beverly Glarner	\$182.16	SAA: April 2023 Internet Service; Executive Assistant Home Office ; Reimbursement for Fuel Purchased - SAA Explorer
04/11/23	Paul Valladares dba Paul's Landscapes	\$270.00	SAA: April 2023 Plant Services
04/11/23	Risk Management Associates, Inc.	\$677.00	SAA: Preferred Governmental Insurance Trust - Business Auto (Add New Vehicle - 2023 Ford Explorer #3) - Policy #PK FL1 0284850 22-19 / 10.01.22-10.01.23
04/18/23	Air & Electrical Services, Inc.	\$125.00	SAA: Service Call to Tecnam Bldg.; Exhaust Fan Not Working
04/18/23	Armando J de Solo dba Stitch Garage	\$30.00	SAA: KSEF Logo on Shirts for Maintenance Department
04/18/23	Big Messages, LLC.	\$164.39	SAA/FBO: After Hours Telephone Answering Service
04/18/23	Bugs Bee-Ware Ext., Inc.	\$1,226.67	SAA: Bi-Monthly Lawn Care Service ; Plant and Shrub Care
04/18/23	Central Security & Electric	\$245.00	SAA: Service Call ; Reset Dialer & Test Communication
04/18/23	TechHouse: Intergrated	\$190.00	SAA: Enhance Cyber-security Posture
04/18/23	TechHouse: Intergrated	\$1,302.00	SAA/FBO: Recurring Monthly Fee for Software
04/18/23	The News Sun	\$12.00	SAA: 2021-2022 Fiscal Year-End Audit Available
04/18/23	The News Sun	\$23.25	SAA: SRA and CRA Annual Financial Report
04/25/23	Air & Electrical Services, Inc.	\$128.87	SAA: Service Call; A/C Short Cycling at Tecnam Building, Drain Line Clogged
04/25/23	Air & Electrical Services, Inc.	\$285.00	SAA: Service Call to Bldg. 103; A/C Not Working, Added Refrigerant, Check Pressures
04/25/23	Air & Electrical Services, Inc.	\$100.00	SAA: Service Call; Reil Light 2 Repair
04/25/23	Cintas	\$339.38	SAA/FBO: Bi-weekly Svcs; Mats, Air Fresheners, Soap/GermX, and Uniforms
04/25/23	Department of Management Services	\$306.57	SAA/FBO: March 2023 Audio, Long Distance & Local Service
04/25/23	Griffin's Carpet Mart	\$6,975.00	SAA: Repairs throughout the Terminal Bldg.; Paint Touch-Ups, Touch-Ups All Doors, Minor Drywall Patches & Caulking
04/25/23	Griffin's Carpet Mart	\$290.00	SAA: Remove & Replace Flooring as Needed in Runway Cafe
04/25/23	Highlands News-Sun	\$138.50	SAA: Subscription Renewal for 26 Weeks
04/25/23	Leedy Electric West	\$1,482.00	SAA: Load Bank on 250kW Generac Generator
04/25/23	Long's Air Conditioning, Inc.	\$410.00	SAA: Added 1lb. R-410A to Mini Split; Perform Service on A/C Systems
04/25/23	Monsido	\$5,750.00	SAA: ADA Compliance Monitoring All Websites (04.18.23 - 04.17.24)
04/25/23	TechHouse: Intergrated	\$848.31	SAA/FBO: General IT Support; Create Digital Signature, Maint on Boardroom computer - Needed Updates for Office & Chrome
04/25/23	The News Sun	\$774.50	SAA: Notice of Request for Proposal #23-05 ; Hurricane Ian Repairs
04/27/23	Dustin Dennis dba DDMax	\$425.00	SAA: Detailing of Airport Vehicles

Invoices Paid in April 2023 Presented in May 2023 Board Meeting

DATE	SAA/FBO - PAID INVOICES	AMOUNT	DESCRIPTION
TOTAL PAID INVOICES:		\$38,823.81	

April 2023 P-Cards

Purchase Date	Vendor Name	Amount	Description
1/9/2023	Claim ADJ/ACCESSIBE.COM	(\$980.00)	SAA: Disputed Charge - Charge from January 2023
4/3/2023	RESIDENCE INN SEBRING	\$636.00	SAA: Hotel Room For Taxiway 4A Resident Project Representative (RPR)
4/4/2023	CHEVRON 0381976	\$41.17	SAA: Fuel -North Carolina FBO Trip
4/4/2023	OFFICE DEPOT #2362	(\$128.56)	SAA: Return VGA to USB Adapter for Monitors
4/5/2023	ABC DISCOUNT APPLIANCE	\$1,953.94	SAA: New Appliances for Bldg 22 West Apartment
4/5/2023	AMZ Alpine Peaks	(\$15.50)	FBO: Disputed Charge
4/5/2023	DISH NETWORK-ONE TIME	\$132.50	FBO: Monthly Satellite Service for Pilot's Lounge - April 2023
4/5/2023	EGO HIGHLANDS CTY TAX COL	\$448.14	SAA: Permanent Tag/Title for 2023 Ford Explorer #00724
4/5/2023	HARBOR FREIGHT TOOLS 538	\$129.99	SAA/FBO:Hitch Vise - FBO and Maintenance Truck
4/5/2023	THE HOME DEPOT #6340	\$114.90	FBO: Cleaning supplies paper towels and wash rags
4/5/2023	THE HOME DEPOT #6340	\$363.00	SAA: Faucet and Disposal for Bldg 22 West Apartment
4/5/2023	WCI SEBRING HAULING	\$747.93	SAA/FBO: Monthly Waste Collection - April 2023 Collection
4/6/2023	AMER ASSOC NOTARIES	\$105.77	SAA: Notary License Renewal - A. Hewett
4/6/2023	APEX OFFICE PRODUCTS INC	\$18.99	FBO: Coffee Creamer For Coffee Station
4/6/2023	NIS SUPPLY	\$554.70	FBO: Absorbent Pads for KSEF Spill Kit
4/7/2023	IN EBRIDGE, INC	\$175.00	SAA: Monthly Fee for Record Retention
4/8/2023	SUNPASS ACC692466	\$25.00	SAA: Replenish SunPass Ex. Directors Vehicle
4/9/2023	ADOBE ACROPRO SUBS	\$152.91	SAA: Monthly Subscriptions
4/9/2023	CIRCLE K # 21259	\$58.61	SAA: Fuel -North Carolina FBO Trip
4/9/2023	EMBASSY SUITES WILMINGTON	\$84.53	SAA: Hotel Room North Carolina FBO Trip
4/9/2023	TIMMONSVILLE	\$52.59	SAA: Fuel -North Carolina FBO Trip
4/10/2023	CIRCLE K # 21526	\$45.17	SAA: Fuel -North Carolina FBO Trip
4/10/2023	CIRCLE K 07515	\$69.00	FBO: Fuel for Old Courtesy Chevy Tahoe
4/10/2023	CIRCLE K 07515	\$112.00	FBO: Fuel for Both Courtesy Ford Explorers
4/10/2023	CIRCLE K 07515	\$93.26	SAA: Fuel for Maintenance Truck
4/10/2023	EMBASSY SUITES	\$210.27	SAA: North Carolina Trip Hotel Room: FBO Visit
4/10/2023	LOCKWOOD AVIATION SUPPLY	\$124.11	FBO: Two Filter Funnels - Sump System Return for UL94 Fuel Tank
4/10/2023	RESIDENCE INN SEBRING	\$477.00	SAA: Hotel Room For Taxiway 4A Resident Project Representative (RPR)
4/11/2023	AARONS CARTS PLUS IN	\$894.13	FBO: Multiple Repairs of Golf Carts 1, 3 & 4
4/11/2023	APEX OFFICE PRODUCTS INC	\$22.92	FBO: Coffee Creamer For FBO Coffee Station
4/11/2023	DMI DELL SALES & SERVIC	\$85.99	SAA: Power Adapter for Director of Finance Laptop
4/11/2023	WAHOO'S FISH HOUSE	\$137.63	SAA: North Carolina Trip Dinner FBO Visit
4/12/2023	BP#7907801DARIEN OCTANE	\$42.43	SAA: Fuel -North Carolina FBO Trip
4/12/2023	HAMPTON INN PAWLEYS ISL	\$502.12	SAA: North Carolina Trip Hotel Room FBO Visit
4/13/2023	TRTAX&ACTGPROFESSIONAL	\$294.00	SAA: Monthly Subscription Fixed Asset Software
4/13/2023	VERIZONWRLSS RTCCR VB	\$1,558.37	SAA/FBO: Monthly Mobile Service March 2023
4/13/2023	W & W LMB LAKE PLACID	\$97.52	SAA: Stop Sign and Reflectors for Madrid Gate
4/14/2023	EGO HIGHLANDS CTY TAX COL	\$765.97	SAA: Permanent Tag/Title for 2023 Ford Explorer #34722 & 0623
4/14/2023	W & W LMB LAKE PLACID	\$13.99	SAA: Water supply for Bldg 22 Westside Apartment
4/17/2023	AMZN Mktp US HV9U654Y1	\$18.18	SAA: Phone Case Ex. Offices
4/17/2023	NIC - FDLE CCHINET	\$25.00	FBO: Pre-employment Background Check - K. Cabrera

April 2023 P-Cards

Purchase Date	Vendor Name	Amount	Description
4/18/2023	MARATHON PETRO232694	\$57.90	SAA: Fuel -North Carolina FBO Trip
4/18/2023	NIC - FDLE CCHINET	\$25.00	FBO: Pre-employment Background Check - M. Wahle
4/18/2023	RESIDENCE INN SEBRING	\$471.00	SAA: Hotel Room For Taxiway 4A Resident Project Representative (RPR)
4/19/2023	RUNWAY CAFE	\$42.48	SAA: Ex. Director and Prospect Lunch
4/19/2023	WAWA 5370	\$79.58	SAA: Fuel for Maintenance Truck
4/20/2023	AMERICAN MESSAGING	\$31.88	SAA/FBO: Emergency Beeper Service
4/20/2023	APEX OFFICE PRODUCTS INC	\$136.44	SAA: 4 - 4" Binders, Pack of Avery Labels, Pack of Tape
4/20/2023	NIS SUPPLY	\$554.70	FBO: Absorbent Pads for KSEF Spill Kit
4/22/2023	LOOPNET INC	\$128.50	SAA: Online SAA Realty Listing Co
4/23/2023	AMAZON.COM HF24U0001 AMZN	\$285.80	SAA: Monitor, Additional RAM & Replacement Laptop Battery for Director of Finance Laptop
4/24/2023	CIRCLE K 07515	\$29.00	FBO: Fuel for Courtsey Car - Explorer
4/24/2023	CIRCLE K 07515	\$40.71	FBO: Fuel for Old Courtesy Ford Explorer
4/24/2023	INNERFACE ARCHITECTURAL S	\$468.00	SAA: Restroom Placards for Admin Restrooms
4/24/2023	NAPA AUTO PARTS SEBRING	\$682.17	SAA: John Deere Battery, Battery Cable Clamps and X Generator Batteries
4/24/2023	RESIDENCE INN SEBRING	\$636.00	SAA: Hotel Room For Taxiway 4A Resident Project Representative (RPR)
4/24/2023	SUNPASS ACC120015426	\$7.20	SAA: Out-of-town Tolls Paid
4/25/2023	WM SUPERCENTER #666	\$53.60	FBO: Water Purchased for Employees and Courtesy Cooler
4/26/2023	AMZN Mktp US HF6R50VU2	\$599.98	SAA: Tires for John Deer Gator
4/26/2023	AMZN Mktp US HF7483XZ2	\$37.95	FBO: Cleaning Spray For Computer,TV, Keyboard Cleaner and Fire Extingusher Tag
4/26/2023	MAE LEE'S DELI & CATERING	\$25.24	SAA: Lunch Admin Professional Day
4/26/2023	NAPA AUTO PARTS SEBRING	\$589.78	SAA: Batteries for 2nd X Generator
4/27/2023	ALLEN ENTERPRISES INC	\$323.73	SAA: Repair Kit for Main Wind Sock
4/27/2023	AMER ASSOC NOTARIES	\$92.25	SAA: Notary Stamps
4/27/2023	CIRCLE K 07515	\$50.00	SAA: Fuel for Maintenance Truck
4/28/2023	NIC -FL SUNBIZ.ORG	\$61.25	SAA: Filing Fee 2023 Annual Report US Sport Aviation Institute
5/2/2023	SP SANDPIPERMEDIA	\$143.95	FBO: Aircraft Fuel Unload and Service Directory Guides
5/2/2023	WAWA 5370	\$100.00	FBO: Fuel for Both Chevy Tahoes
5/2/2023	YARBROUGH TIRE & SERVICE	\$85.72	FBO: Oil Change for 2014 Chevy Tahoe
Total Due:		\$16,100.48	

Accounts Payable Aged Invoice Report
Open Invoices - Aged by Invoice Date - As of 5/11/2023
Sebring Airport Authority (SAA)

Vendor Number/ Invoice Number	Invoice Date	Due Date	Invoice Balance	Current	30 Days	60 Days	90 Days	120 Days	
ALLIED Universal Protection Service, LLC 14237110	5/1/2023	5/31/2023	12,850.50	12,850.50	0.00	0.00	0.00	0.00	SAA: April 2023 Security Service
CM 14160199	4/30/2023	5/30/2023	1,224.15	1,224.15	0.00	0.00	0.00	0.00	SAA: Credit Memo For Allied Universal Technology Services 09.01.22 - 11.30.22
Vendor ALLIED Totals:			<u>11,626.35</u>	<u>11,626.35</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
AVCON Avcon, Inc. 124548	4/30/2023	5/30/2023	10,220.14	10,220.14	0.00	0.00	0.00	0.00	SAA: March 2023 - April 2023 SEF Taxiway A4 Construction - Grant Reimbursed
124640	4/30/2023	5/30/2023	3,600.00	3,600.00	0.00	0.00	0.00	0.00	SAA: April 2023 General On-Call Services
Vendor AVCON Totals:			<u>13,820.14</u>	<u>13,820.14</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
BECKER Becker & Poliakoff, P.A. 5070538	4/30/2023	5/30/2023	80.00	80.00	0.00	0.00	0.00	0.00	SAA: Construction Claims with Frasier Contracting, LLC.
5070542	4/30/2023	5/30/2023	1,350.00	1,350.00	0.00	0.00	0.00	0.00	SAA: General Construction Issues; Haywood Taylor Reconstruction
Vendor BECKER Totals:			<u>1,430.00</u>	<u>1,430.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
BUGS Bugs Bee-Ware Ext., Inc. 172684	5/9/2023	5/23/2023	385.00	385.00	0.00	0.00	0.00	0.00	SAA: Palm Tree Injections
Vendor BUGS Totals:			<u>385.00</u>	<u>385.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
CINTAS Cintas 4154394936	5/3/2023	6/2/2023	465.95	465.95	0.00	0.00	0.00	0.00	SAA/FBO: Bi-Weekly Svc; Mats, Air Fresheners, Soap/Germx, & Uniforms
Vendor CINTAS Totals:			<u>465.95</u>	<u>465.95</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
DIANARI Diana Ries Designs, Inc. 14249	4/30/2023	5/30/2023	577.00	577.00	0.00	0.00	0.00	0.00	SAA/CRA: April 2023 Website Updates
Vendor DIANARI Totals:			<u>577.00</u>	<u>577.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
JACKS Jack's Lawn Service 2257 MAY 2023	5/1/2023	5/31/2023	8,325.00	8,325.00	0.00	0.00	0.00	0.00	SAA: May 2023 Lawn & Landscape Care
Vendor JACKS Totals:			<u>8,325.00</u>	<u>8,325.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
MNI Manufacturers' News, Inc. J20316-00	5/1/2023	5/31/2023	255.00	255.00	0.00	0.00	0.00	0.00	SAA: Advertising in the Florida Manufacturers Register
Vendor MNI Totals:			<u>255.00</u>	<u>255.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	

Accounts Payable Aged Invoice Report
Open Invoices - Aged by Invoice Date - As of 5/11/2023
Sebring Airport Authority (SAA)

Vendor Number/ Invoice Number	Invoice Date	Due Date	Invoice Balance	Current	30 Days	60 Days	90 Days	120 Days	
PAULS Paul C Valladares Jr 307 MAY 2023	5/1/2023	5/1/2023	270.00	270.00	0.00	0.00	0.00	0.00	SAA/FBO: May 2023 Plant Services
Vendor PAULS Totals:			<u>270.00</u>	<u>270.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
SHUTTS Shutts & Bowen, LLP 1762052	4/30/2023	5/30/2023	200.00	200.00	0.00	0.00	0.00	0.00	SAA: April 2023 Legal SVC; Runway Extension- Grant Reimbursed
1762055	4/30/2023	5/30/2023	500.00	500.00	0.00	0.00	0.00	0.00	SAA: April 2023 Legal SVC; Haywood Taylor Reconstruction
Vendor SHUTTS Totals:			<u>700.00</u>	<u>700.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
SWAINE Swaine, Harris & Wohl, P.A. 9925	4/30/2023	5/30/2023	6,225.62	6,225.62	0.00	0.00	0.00	0.00	SAA: April 2023 General On-Call Service
Vendor SWAINE Totals:			<u>6,225.62</u>	<u>6,225.62</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
Report Totals:			<u><u>44,080.06</u></u>	<u><u>44,080.06</u></u>	<u><u>0.00</u></u>	<u><u>0.00</u></u>	<u><u>0.00</u></u>	<u><u>0.00</u></u>	

Accounts Payable Aged Invoice Report
Open Invoices - Aged by Invoice Date - As of 5/11/2023
Sebring Airport Authority (FBO)

Vendor Name / Invoice Number	Invoice Date	Due Date	Invoice Balance	Current	30 Days	60 Days	90 Days	120 Days	
ASCENT Ascent Aviation Group									
929525	5/2/2023	5/22/2023	37,197.16	37,197.16	0.00	0.00	0.00	0.00	FBO: 100LL Av_Gas at KSEF
929528	4/30/2023	5/30/2023	23,693.54	23,693.54	0.00	0.00	0.00	0.00	FBO: Jet - A Fuel at KSEF
930932	5/2/2023	6/16/2023	23,551.88	23,551.88	0.00	0.00	0.00	0.00	FBO: Jet - A Fuel at KSEF
930935	5/5/2023	6/19/2023	18,074.39	18,074.39	0.00	0.00	0.00	0.00	FBO: Jet - A Fuel at APBR
M289418	5/1/2023	5/25/2023	74.02	74.02	0.00	0.00	0.00	0.00	FBO: WingPoints Issued Through 05.05.23
M289495	5/8/2023	5/28/2023	65.02	65.02	0.00	0.00	0.00	0.00	FBO: WingPoints Through 05.08.23
S039832	5/1/2023	5/21/2023	297.50	297.50	0.00	0.00	0.00	0.00	FBO: TFBO Software - 5 Users
Vendor ASCENT Totals:			<u>102,953.51</u>	<u>102,953.51</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
GIBSON Gibson Aviation Services Inc.									
6043	4/27/2023	5/27/2023	2,800.78	2,800.78	0.00	0.00	0.00	0.00	FBO: Program Digital Meter & Add Fuel System Icing Inhibitor
Vendor GIBSON Totals:			<u>2,800.78</u>	<u>2,800.78</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	
Report Totals:			<u>105,754.29</u>	<u>105,754.29</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	

Sebring Airport Authority Agenda Item Summary

Meeting Date: May 18, 2023

Presenter: Mike Willingham

Agenda Item: RFP 23-01 Disaster Debris Removal and Disposal Services
– Award and Contract

Background: Staff advertised RFP 23-01 Disaster Debris Removal and Disposal Services on March 3, 2023. Three (3) proposals were received and all proposers fulfilled the RFP requirements. Selection Committee evaluated the proposals and deemed Phillips and Jordan and TFR Enterprises, Inc. to be the most responsive and responsible proposers. Staff recommends selecting both firms to ensure availability.

Requested Motion: Move to approve and authorize the Chairman or Vice Chairman and Secretary or Assistant Secretary to execute contracts.

Board Action:

Approved	<u> X </u>
Denied	<u> </u>
Tabled	<u> </u>

DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICES CONTRACT
(SEBRING AIRPORT AUTHORITY REQUEST FOR PROPOSALS NO. RFP 23-01)

THIS IS AN AGREEMENT between the **SEBRING AIRPORT AUTHORITY**, a body politic and corporate of the State of Florida (herein called "SAA" or "Authority") and TFR Enterprises, Inc., a Florida corporation or limited liability company (herein called "Contractor").

1. **PREMISE.** The Authority requested proposals from qualified contractors to assist in Disaster Debris Removal and Disposal Services to remove and lawfully dispose of disaster-generated debris (other than household and recyclable garbage) from public property and public rights-of-way, and to setup and operate Temporary Debris Staging and Reduction Sites (TDSRS) for the Authority immediately after a disaster. This Contract is a pre-event agreement, which results in no immediate costs to the Authority. Contractor has the preferred qualifications to perform these services, and SAA would like for Contractor to perform the work and Contractor would like to do so on the terms and conditions set forth herein. In the event of an applicable emergency, the Authority intends to seek reimbursement from federal and/or state agencies for the activities performed under this Contract, including reimbursement through the Public Assistance Program of the Federal Emergency Management Agency (FEMA) and other applicable federal and state programs from agencies such as the Federal Highway Administration (FHWA).

2. **WORK.**
 - a. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish all materials, labor, tools, equipment, superintendence, security, insurance, transportation, fuel, power, light, telephone, sanitary facilities, and all other accessories, facilities, incidentals, and services necessary to provide and appropriately document debris removal and disposal services set forth in Request for Proposal RFP 23-01 (the "Work" or "Project").

 - b. The Work shall be performed in accordance with: (i) the conditions, activities, and prices stated in this Contract and Request for Proposals RFP 23-01 (including addenda, if any, and all of the "Legal Provisions" and "Other" provisions set forth in Section IV); (ii) all applicable laws, rules, ordinances, and regulations; (iii) Contractor's bid/proposal (including the pricing schedule, which is attached hereto as Attachment A); and (iv) the Legal Provisions – each of which are made a part hereof by reference and collectively constitute this Contract (herein called the "Contract Documents").

 - c. The Work contemplates debris removal, emergency road clearance, disposal of white goods, removal of tree stumps, placement of fill dirt, planning of one or more TDSRS, operation and reclamation of the TDSRS, debris processing, abatement of hazardous waste,

disposal of debris, providing daily and weekly reports to the Authority, creation and maintenance of appropriate documentation and records, and related services and other activities following a disaster as set forth more specifically in the Contract Documents.

- d. In performance of the Work, Contractor shall (i) use mechanical equipment to load and reasonably compact debris into trucks and trailers, and all trailers, trucks, and equipment used to perform the Work must be in good working order and in compliance with all applicable federal, state, and local rules and regulations, including the operation thereof; (ii) provide a safe working environment for personnel; (iii) avoid placing materials in adjacent ditches or drainage structures; (iv) not solicit work from private citizens or others during the period of this Contract; (v) not, under any circumstance, mix debris hauled for others with debris hauled under this Contract -- the failure to comply with this provision will result in no payment to Contractor for any load with mixed-debris; (vi) meet with SAA and SAA's designated debris-monitor on an as-requested basis to update progress of Work and discuss issues; (vii) provide SAA or its debris-monitor with periodic verbal and written updates and reports; (viii) appropriately and adequately document all Work with required specificity pursuant to FEMA requirements in order to maximize reimbursement to SAA; and (ix) **not proceed with Work prior to coordination with SAA's designated debris-monitor.**
- e. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract. In order to maximize financial recovery by the SAA, and for purposes of compliance with applicable laws, rules, and regulations, Contractor shall comply with all debris eligibility and documentation criteria mandated, set forth, outlined, or required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) (i.e., the Public Assistance program), Florida Department of Emergency Management (FDEM), Florida Department of Transportation (FDOT), and all other applicable local, state, and federal agencies or entities.
- f. SAA gives Contractor no guarantee of any Project or any specific amount of Work under this Contract. SAA does not guarantee Contractor will be activated pursuant to this Contract. The Contract is a pre-event agreement that will be activated by SAA through a Notice to Proceed following an emergency or disaster situation. No compensation will accrue to Contractor unless and until the Contract is activated by the SAA.

3. COMMENCEMENT AND COMPLETION DATES.

- a. This Contract is effective beginning May 1, 2023, continuing for a term of three years thereafter unless sooner terminated as herein provided. This contract is eligible for two (2) additional two-year contract extensions after the initial contract term at the sole discretion of the Authority. Any price increase must be disclosed in writing to the Sebring Airport Authority Finance Director ninety (90) days in advance of any extension. In the event Work is being performed when a term expires, the Contract will automatically extend for

a period of time reasonable for Contractor to complete the Work, in the Authority's discretion but for no greater than 12 months, and prices shall remain as bid during such emergency continuation of contract.

- b. Contractor shall provide Authority with an emergency on-call telephone number that may be utilized by the Authority 24-hours a day, 365 days a year to contact the Contractor. The Contractor shall immediately respond to the Authority and shall have personnel on-site and commencing Work no less than twenty-four (24) hours after notification. Failure to timely mobilize or commence Work may result in a penalty. The Authority will issue to Contractor a Notice to Proceed containing a work order and work task assignment as soon as reasonably practicable. Contractor shall provide the Authority a written estimated Project budget with a Not-to-Exceed amount and estimated date or dates of completion within forty-eight (48) hours of receipt of the Notice to Proceed. The estimated dates of completion may be extended by SAA upon written request of Contractor.
 - c. Due to the emergency nature and damage control required for disasters, delays in Contractor's response is not acceptable. Time is of the essence in this Contract. Contractor shall be responsible for completing all Work in an expedited manner, including the clearing, processing, and disposal of all eligible debris, and the reclamation of the TDSRS.
4. **CONTRACT PRICE AND PAYMENT.** Payment under this Contract is based on actual Work performed and properly documented pursuant to the pricing lists set forth in the Contract Documents. Such pricing includes all costs for labor, materials, equipment, machinery, tools, apparatus, and transportation necessary to perform the Work; **emergency service charges or fees are not permitted.** SAA reserves the right to deduct from any invoice an amount for defective or nonconforming Work or for Work not provided but invoiced. Payment will be made only for activities related to eligible debris as defined by FEMA. SAA's authorization of Contractor's estimated Project budget and Not-to-Exceed amount is required prior to performance of Work. It is the Contractor's sole responsibility to manage Project costs in adherence to the Not-to-Exceed amount. SAA will not be liable for more than the Not-to-Exceed amount. To the extent SAA pays Contractor for any Work later found not to be reimbursable for failure to comply with FEMA requirements, Contractor shall reimburse SAA for such amounts.
5. **PAYMENTS TO CONTRACTOR.**
- a. SAA shall establish a schedule for submittal of invoices from Contractor given the uniqueness of each Project. Contractors shall submit invoices regularly and for no more than 30-day periods. Contractor's invoices must be of appropriate quality detail to satisfy FEMA, FDOT, or FHWA requirements and audits. Contractor's invoices shall be accompanied by appropriate supporting documentation. SAA may accept or reject any invoice. If SAA rejects an invoice, it will indicate to Contractor the reason for rejection.

- b. **Application for Payment.** Contractor shall make application for payment based upon percentages of completion in the amount of ninety percent (90%) of the Work completed up to the last day of the previous month, less the aggregate of previous payments. The remaining ten percent (10%) of the Work completed shall be retainage held by SAA until final completion of the Project. Once the Project has reached fifty percent (50%) completion, the retainage on future payments shall be five percent (5%). SAA's Executive Director must approve each payment request. Each payment application shall also:
- i. detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor;
 - ii. include a certification by Contractor that the Work performed was in complete accordance with the Contract Documents;
 - iii. include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract; and
 - iv. include executed partial and/or final payment bond waivers from all suppliers and subcontractors.

Withholding of Payments. Payments due to the Contractor may be withheld by SAA on account of defective Work not remedied, claims filed, failure of Contractor to make payments properly to subcontractor or for material or labor, failure to include appropriate documentation with invoices, or the reasonable belief of SAA that the Work to be performed under this Contract which remains unfinished cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or sufficient properly skilled workmen or materials of the proper quality or quantity necessary for the performance of the Work hereunder or fail in any respect to prosecute the Work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, SAA shall have the option, after three (3) days written notice to Contractor, and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by SAA to Contractor.

- c. Upon approval of the final invoice and satisfactory remediation of the TDSRS, Contractor shall invoice SAA for retainage.
6. **DRUG-FREE WORKPLACE.** Contractor acknowledges that SAA is a drug-free work place. Contractor covenants that all employees of Contractor working upon SAA property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
7. **WORKMANSHIP.** Contractor shall, in a good workman like manner, perform all Work and furnish all supplies and materials necessary and proper to complete the Work under this Contract, within the time specified herein, in accordance with the provisions of this Contract, including any specifications, plans, and drawings provided to Contractor. Contractor shall complete the Work to the satisfaction of SAA. Contractor shall promptly repair, at its sole

cost, any damage caused, in whole or in part, by Contractor or its agents or subcontractors during performance of the Work.

8. **LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work and the protection of persons and property. Contractor shall also maintain all licenses and permits required for the Work hereunder in an active status, including licenses and permits related to Contractor's vehicles, trailers, and equipment. Contractor shall ensure that all Contractor's employees, agents, representatives, and subcontractors have and maintain all licenses and permits required for performance of Work. Contractor shall perform the Work in compliance with all federal contract provisions required by FEMA or outlined or referred to in 2 CFR § 200.318 through § 200.326. Contractor shall perform work in compliance with all provisions of FHWA Form 1273, which is attached hereto as Attachment B and incorporated herein by reference. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
9. **SUSPENSION OF WORK.** At any time and without cause, SAA may suspend the Work or any portion thereof for a period of no more than thirty (30) days upon written notice to Contractor. SAA's notice shall provide the date upon which the Work shall be resumed, and Contractor shall resume Work on the date so fixed.
10. **TERMINATION OF CONTRACT; CONVENIENCE OR EVENT OF BREACH.** SAA may, by written notice, terminate this Contract in whole or in part at any time, either for SAA's convenience or because of Contractor's default or breach, including but not limited to, failure to perform any material provision or portion of the Contract Documents, failure to pay vendors, suppliers, subcontractors or sub-subcontractors as required, failure to adhere to FEMA requirements, failure to adhere to applicable laws, rules, ordinances, and regulations, or failure to undertake adequate safety measures during the performance of a Project. Upon receipt of such notice of termination, Work shall be immediately discontinued (unless the notice directs otherwise). SAA will only pay Contractor for Work completed up to the time of termination, less the amount of reasonable damages suffered by SAA by reason of Contractor's failure to abide by the terms of this Contract. Notwithstanding the above, Contractor is not relieved of liability to the SAA for damages sustained by the SAA by virtue of any breach of this Contract by Contractor and SAA may withhold any payments to Contractor for the purpose of setoff until such time as the amount of damages due the SAA from Contractor is determined. The rights and remedies of SAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
11. **LIQUIDATED DAMAGES.**
 - a. Contractor and SAA acknowledge that in the event Contractor fails to commence Work or timely complete the Work by the dates established therefor, SAA will incur substantial damages by loss of use or further deterioration of buildings and property and dangers to life, public health, and safety, and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the

amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that SAA would incur in such a situation. Such liquidated damages shall be the sole and exclusive remedy of SAA for Contractor's failure to timely commence or complete Work, and SAA hereby waives all other remedies available at law or in equity with respect to losses resulting from late commencement and completion. The amount of liquidated damages calculated hereunder does not include any penalty.

- b. If Contractor fails to timely commence the Work as set forth herein, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay. If Contractor fails to achieve timely completion of the Work, which period of completion may be extended upon written agreement of SAA, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay until Work is substantially complete and then \$150 per calendar date for each calendar day until final completion of the Work. For avoidance of any doubt, the above provisions apply to the timely opening and successful reclamation of the TDSRS.

12. INDEPENDENT CONTRACTOR. The parties expressly recognize that the relationship between SAA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of SAA.

13. INSURANCE. Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and approved by SAA:

- a. **Commercial General Liability.** Commercial general liability insurance shall be carried with limits of at least \$1,000,000 of combined single limit for Bodily Injury and Property Damage and \$1,000,000 annual aggregate. Coverage shall include Premises and Operations, Broad Form Contractual, Products and Completed Operations, Owners and Contractors Protective Liability (also known as Independent Contractors Liability), and when applicable include Explosion, Collapse and Underground Damage (XCU), and shall include Contingent Liability against claims arising out of subcontractors with the same minimum amount.
- b. **Automobile Liability.** Vehicle liability insurance shall be carried with limits of at least \$1,000,000 for Bodily Injury and Property Damage for "all autos" including owned, hired and non-owned autos.
- c. **Workers' Compensation.** Coverage to apply for all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease.

d. **Evidence of Insurance.** Contractor shall furnish SAA with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Sebring Airport Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. If Contractor is exempt from workers' compensation requirements, it shall submit a DWC-252 Certificate Exemption Form. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. All certificates of insurance must be on file with and approved by SAA before the commencement of any work activities.

14. **SUBCONTRACTS.** A portion of a Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Contract applicable to the Work performed by such subcontractor, including, but not limited to, insurance requirements except for excess/umbrella coverage, compliance with laws and regulations, and indemnification of SAA. Contractor shall provide SAA with a list of subcontractors Contractor intends to use, and SAA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request and require changes to such subcontractor agreements as SAA deems necessary. SAA shall not be obligated to pay any subcontractor under any circumstance.

15. **NOTICES.** Whenever any notice is required or permitted by this contract to be given, such notice shall be hand-delivered or given by certified mail or overnight delivery addressed to:

Contractor:
Tiffany Jean
601 Leander Drive
Leander, TX 78641
512-260-3322
tiffany@tfrinc.com

SAA:
Executive Director
Sebring Airport Authority
128 Authority Lane
Sebring, FL 33870

Notice shall be considered given when deposited with the U.S. Postal Service or commercial carrier, postage prepaid. Each party will be responsible for notifying the other of any change in their address.

16. **ASSIGNMENT.** Contractor shall not assign this contract, in whole or in part, or any monies due or to become due hereunder, without the written consent of SAA.

17. **ACCEPTANCE AND WARRANTY.**

- a. Acceptance of the Work and final payment shall not relieve Contractor of the obligation to remedy Work that does not comply with the Contract Documents. Contractor shall promptly repair all defects at Contractor's expense.
- b. Contractor warrants to SAA that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these standards may be considered defective.

- 18. CORRECTION OF WORK.** Contractor shall promptly correct all Work determined to be defective or failing to conform to the Contract Documents. Contractor shall bear all costs of correcting such defective Work.
- 19. DAMAGE TO PROPERTY.** Contractor agrees that all SAA or third-party owned property, including above and underground utilities, that is damaged by Contractor's personnel, agents, subcontractors, or equipment shall be promptly repaired or replaced, at Contractor's expense. SAA may withhold final payment of retainage to Contractor until all claims, damages, injury, or losses from such are resolved. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to a) persons who may be affected by the Work; b) all the Work and materials and equipment; and c) other property, including trees, shrubs, lawns, and pavements.
- 20. TAXES.** Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work under this Contract.
- 21. PERMITS, FEES AND NOTICES.** Contractor shall secure and pay for all permits and licenses necessary for the proper execution and completion of the Work which are in effect as of the date of execution of this Contract. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If Contractor performs any Work which is contrary to such laws, ordinances, rules and regulations in effect as of the date of execution of this Contract, then Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 22. RESPONSIBILITY FOR THOSE PERFORMING THE WORK.** Contractor shall be responsible to SAA for the acts and omissions of all its employees, agents, and all subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.
- 23. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.
- 24. SAFETY AND HEALTH REGULATIONS.** Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act and such other rules and regulations as may be applicable to the Work.

- a. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- b. Contractor shall take all necessary precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
 - i. All employees on the Work and all other persons who may be affected thereby;
 - ii. All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or any of its subcontractors or sub-subcontractors; and
 - iii. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.
- c. Any injury to persons or damage to property shall be immediately repaired or remedied by Contractor, subject to the limits of indemnification provided by Contractor herein.
- d. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss.
- e. Contractor and SAA shall mutually agree on appropriate staging areas for the materials and equipment for the Project so as to not unreasonably encumber other real property.

25. INDEMNIFICATION AND HOLD HARMLESS.

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the SAA, its officers, Board members, agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. In any and all claims against the SAA, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall be limited to ten million dollars (\$10,000,000.00) and

shall not be limited in any way to the agreed upon contract price as shown in this contract or the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This provision shall survive the termination or expiration of this Contract.

- b. The duty to defend under this paragraph (or elsewhere in the Contract) is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this paragraph (or elsewhere in the Contract) will survive the expiration or earlier termination of this Contract.

26. DEFAULT COSTS AND EXPENSES. Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including SAA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.

27. BINDING EFFECT. This Contract shall bind and inure to the benefit of the successors and assigns of each of the parties.

28. GOVERNING LAW. This Contract will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles thereof, and the parties agree to submit to the jurisdiction of the Tenth Judicial Circuit, in and for Highlands County, Florida.

29. PERFORMANCE AND PAYMENT BONDS. Contractor shall provide performance and payment bonds, each in the full amount of the Not-to-Exceed amount, within forty-eight (48) hours after receipt of the Notice to Proceed. SAA may require the posting of additional performance and payment bonds or riders increasing the existing bond amounts as a result of any increase in the estimated value of the Project.

30. CONFLICTS OF INTERESTS; GIFTS. The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

31. PUBLIC ENTITY CRIMES. By signing this contract, Contractor certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list." By signing below, Contractor certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.

32. SCRUTINIZED COMPANIES. By signing below, Contractor certifies that (a) it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, and is not engaged in a boycott of Israel; or (b) if the Contract is valued at one-million dollars or more Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes, and is not engaged in business operations in Cuba or Syria.

For any contract for goods or services of \$1 million or more, SAA may terminate the contract at its option if Contractor is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. For any contract for goods of services of any amount, SAA may terminate the contract at its option if contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33. PUBLIC RECORDS. The Contractor is required to keep and maintain public records that ordinarily and necessarily would be required by SAA in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that SAA would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. This agreement can be unilaterally cancelled, and no further payments made by SAA, if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received in conjunction with this Contract pursuant to the provisions of Chapter 119, Florida Statutes. The Contractor must ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to SAA all public records in possession of the contractor upon termination of the

contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SAA in a format that is compatible with the information technology systems of the public agency. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT BEVERLY K. GLARNER, THE CUSTODIAN OF PUBLIC RECORDS at 863-314-1301, bev@sebring-airport.com or 128 AUTHORITY LANE, SEBRING, FL 33870.**

34. **EVERIFY.** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Contractor's employees hired during the term of this Agreement.
35. **TIME.** Time is of the essence of this Contract.
36. **ENTIRE AGREEMENT AND MODIFICATIONS.** The parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Contract is fully integrated, supersedes all prior agreements and understandings, and contains the entire agreement between the parties. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Contract unless reduced to writing and signed by the parties.
37. **MULTIPLE ORIGINALS.** This Contract is executed in multiple copies, each of which shall be deemed an original.

[Signatures on the following page]

AGREED TO this 18th day of May, 2023.

Two Witnesses as to SAA:

Beverly K. Glarner
(Printed Name) **Beverly K. Glarner**

Colleen Plonsky
(Printed Name) **Colleen Plonsky**

SEBRING AIRPORT AUTHORITY, a
body politic and corporate of the State of
Florida

By: Mark Andrews
 Mark Andrews, as its Chair or
 Peter H. McDevitt, as its Vice Chair

Attest: Stanley H. Wells
 Stanley H. Wells, as its Secretary or
 D. Craig Johnson, as its Asst. Secretary

(corporate seal)



Two Witnesses as to Contractor:

Enka Treuel
(Printed Name) **Enka Treuel**

Tiffany Jean
(Printed Name) **Tiffany Jean**

TFR Enterprises, Inc., a Florida corporation
or limited liability company

By: Tipton F. Rowland
Tipton F. Rowland as its CEO/President

(corporate seal)

Attachment A – Pricing Schedule (from Contractor’s proposal)

**RFP #23-03 DISASTER DEBRIS REMOVAL & DISPOSAL SERVICES
 PRICE PROPOSAL FORM**

NOTE: Respondents are to make no changes to the table below and are to fill it out completely. Values must be provided for all categories below or your response may be deemed non-responsive.

<u>FEE SCHEDULE</u>		
1.	Vegetative storm debris picked up at the designated work zone, hauled to and dumped at a Temporary Debris Storage and Reduction Site (TDSRS).	\$ /CY 7.75
2.	Construction and Demolition debris hauled to and dumped at an Authority approved disposal site or landfill.	\$ /CY 9.75
3.	Validated load hauled tickets from the TDSRS for final processed vegetative debris at an Authority approved recycling facility.	\$ /CY 5.50
4.	Tipping fees/disposal costs for Green Waste shall be paid by Contractor, and actual incurred cost shall be invoiced to the Authority for reimbursement.	\$ /CY Pass through
5.	Management, Processing and Loading of all eligible debris and/or residue at the TDSRS. Including locating, leasing (if required), preparing and layout of site; management, maintenance and operation of the TDSRS; the receiving, sorting, segregation, processing and reduction of vegetative debris (chipping or grinding or burning as directed by the Authority); furnishing materials, supplies, labor, tools and equipment necessary to perform services; maintenance of internal roadways, providing traffic control, dust control, erosion control, articulated boom lift(s), lighting, hazardous/toxic waste (HTW) containment areas, fire protection, all required permits, environmental monitoring, and safety measures; loading reduced/stored debris and initiating load tickets for final disposition; and Closure and remediation of the TDSRS.	\$ /CY 5.75
6.	Pick up and dispose of hazardous materials.	\$ /lb. 2.00
7.	Dead Animal Collection, Transportation & Disposal.	\$ /lb. 2.00
8.	<u>Hazardous trees</u> – Trees will be evaluated by the Authority and be designated to be cut down and hauled to the TDSRS for reduction. Trees will be measured 3' above the ground.	
	Trees with branches remaining – FEE ONLY TO CUT TREE	
	6-12" Diameter	\$ /tree 198.00
	13-24" Diameter	\$ /tree 250.00
	25-48" Diameter	\$ /tree 450.00
	> 48" Diameter	\$ /tree 950.00
9.	Stumps up to 24" in diameter.	\$ /EA 350.00
	Stumps over 24" in diameter (requires Authority approval).	\$ /EA 450.00

10.	<u>Hangers</u> – Hangers will be considered any hanging/damaged remaining in the tree(s) above the ROW of 2" or greater diameter. The Contractor, at the direction of the Authority, will remove hangers for a unit price per hanger.	
	2-4" Hanger	\$ /hanger 145.00
	5-12" Hanger	\$ /hanger 145.00
	> 12" Hanger	\$ /hanger 145.00
11.	<u>Private Property Demolition and Debris Removal</u> – The Contractor shall operate within the Public Right-of-Way (ROW) only as identified and directed by the Authority. Operations beyond the ROW on private property shall be only as necessary to abate imminent and significant threats to the public health and safety of the community and shall include, but is not limited to, the demolition of structures and the removal and relocation of the debris to the public ROW.	\$ /CY 9.75
12.	<u>Tipping fees/disposal costs for construction and demolition (C&D) debris</u> shall be paid by the Contractor.	Pass through
13.	<u>Fallen Trees</u> – The Contractor shall cut a fallen tree, which extends onto the ROW from private property, at the point where it enters the ROW. Vegetative debris will be placed on the ROW for collection.	Price Included
14.	<u>Fill Dirt</u> – As identified and directed by the Authority, the Contractor shall place compatible fill dirt in ruts created by equipment and vehicles, holes created by removal of hazardous stumps and other areas that pose an imminent and significant threat to public health and safety.	\$ /CY 31.00
15.	<u>White Goods</u> – The Contractor shall recycle or dispose of all eligible white goods in accordance with all federal, state and local rules, regulations and laws.	\$ /unit 25.00
16.	<u>Freon Recovery</u> – The Contractor SHALL REMOVE AND RECOVER Freon from any white goods, such as refrigerators, freezers or air conditioners, at the TDSRS or final disposition site in accordance with all federal, state and local rules, regulations and laws.	\$ /unit 50.00
17.	<u>Training and Assistance Sessions</u> for all key Authority personnel and assistance in all disaster debris recovery planning efforts as requested.	Price Included
18.	<u>Preliminary Damage Assessment</u> – Determining the impact and magnitude of the disaster event before federal assistance is requested, identifying damaged locations and facilities, distinguishing between pre-disaster damage and disaster – generated damage, documenting eligible costs and describing the physical and financial impact of the disaster.	Price Included
19.	<u>Mobilization and Demobilization</u> – All arrangements necessary to mobilize and demobilize the Contractor's labor force and machinery needed to perform the Scope of Services contained herein shall be made by the Contractor.	Price Included
20.	<u>Temporary Storage of Documents</u> – The Contractor shall provide storage of daily or disaster-related documents and reports for protection during the disaster event.	Price Included
21.	<u>Debris Planning Efforts</u> – The Contractor shall assist in all disaster debris recovery planning efforts as requested by the Authority. These planning efforts shall include, but are not limited to, development of a <i>debris management</i> plan, identification of adequate temporary debris storage and reduction sites, estimation of debris quantities, and emergency action plans for debris clearance following a disaster event.	Price Included

22.	<p><u>Closure and Remediation of the TDSRS</u> – The Contractor shall remove all Contractor equipment and temporary structures and shall dispose of all residual debris from the TDSRS at an approved final disposition site. <u>The Contractor is responsible for the reclamation and remediation of the TDSRS site to its original state prior to use by the Contractor.</u></p>	Price Included
23.	<p><u>Reporting and Documentation</u> – The Contractor shall provide and submit to the Authority all reports and documents as may be necessary to <u>adequately</u> document the <u>Debris Recovery Services</u> in accordance with FEMA requirements.</p>	Price Included

HOURLY FEE SCHEDULE

<i>All equipment rates below include operator, fuel and maintenance costs Add additional equipment if necessary</i>	
Personnel/Equipment	Hourly Rate
Stump Grinder	\$ 130.00
50' Bucket Truck	\$ 235.00
16-20 Cubic Yard Dump Truck	\$ 155.00
850 HP or Equivalent Tree Grinder	\$ 490.00
Water Truck (2000 gal.)	\$ 105.00
Rubber Tire Backhoe	\$ 110.00
Climber with Gear	\$ 90.00
Superintendent with Truck	\$ 75.00
Foreman with Truck	\$ 70.00
Operator with Chainsaw	\$ 65.00
Traffic Control Personnel	\$ 55.00
Laborer	\$ 50.00
Field Project Foreman	\$ 70.00
Administrative Assistant	\$ 55.00
Clerical	\$ 50.00
Pickup Truck	\$ 25.00
Mechanized Broom	\$ 30.00
Track hoe, 490 or Equivalent	\$ 160.00
50 Ton Lowboy	\$ 115.00
Skid steer	\$ 145.00
Rubber Tire Excavator	\$ 150.00
	\$
	\$
	\$
	\$

Attachment B – FHWA Form 1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. 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 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own

organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. **Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to

employees, applicants for employment and potential employees.

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

unless authorized by the department or agency entering into this transaction.

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

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

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

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

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

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

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

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

unless authorized by the department or agency entering into this transaction.

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

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

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

DISASTER DEBRIS REMOVAL AND DISPOSAL SERVICES CONTRACT
(SEBRING AIRPORT AUTHORITY REQUEST FOR PROPOSALS NO. RFP 23-01)

THIS IS AN AGREEMENT between the **SEBRING AIRPORT AUTHORITY**, a body politic and corporate of the State of Florida (herein called “SAA” or “Authority”) and Phillips and Jordan, Inc., a North Carolina □ corporation or □ limited liability company (herein called “Contractor”).

1. PREMISE. The Authority requested proposals from qualified contractors to assist in Disaster Debris Removal and Disposal Services to remove and lawfully dispose of disaster-generated debris (other than household and recyclable garbage) from public property and public rights-of-way, and to setup and operate Temporary Debris Staging and Reduction Sites (TDSRS) for the Authority immediately after a disaster. This Contract is a pre-event agreement, which results in no immediate costs to the Authority. Contractor has the preferred qualifications to perform these services, and SAA would like for Contractor to perform the work and Contractor would like to do so on the terms and conditions set forth herein. In the event of an applicable emergency, the Authority intends to seek reimbursement from federal and/or state agencies for the activities performed under this Contract, including reimbursement through the Public Assistance Program of the Federal Emergency Management Agency (FEMA) and other applicable federal and state programs from agencies such as the Federal Highway Administration (FHWA).

2. WORK.

- a. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish all materials, labor, tools, equipment, superintendence, security, insurance, transportation, fuel, power, light, telephone, sanitary facilities, and all other accessories, facilities, incidentals, and services necessary to provide and appropriately document **debris removal and disposal services** set forth in Request for Proposal RFP 23-01 (the “Work” or “Project”).
- b. The Work shall be performed in accordance with: (i) the conditions, activities, and prices stated in this Contract and Request for Proposals RFP 23-01 (including addenda, if any, and all of the “Legal Provisions” and “Other” provisions set forth in Section IV); (ii) all applicable laws, rules, ordinances, and regulations; (iii) Contractor’s bid/proposal (including the pricing schedule, which is attached hereto as Attachment A); and (iv) the Legal Provisions – each of which are made a part hereof by reference and collectively constitute this Contract (herein called the “Contract Documents”).
- c. The Work contemplates debris removal, emergency road clearance, disposal of white goods, removal of tree stumps, placement of fill dirt, planning of one or more TDSRS, operation and reclamation of the TDSRS, debris processing, abatement of hazardous waste,

disposal of debris, providing daily and weekly reports to the Authority, creation and maintenance of appropriate documentation and records, and related services and other activities following a disaster as set forth more specifically in the Contract Documents.

- d. In performance of the Work, Contractor shall (i) use mechanical equipment to load and reasonably compact debris into trucks and trailers, and all trailers, trucks, and equipment used to perform the Work must be in good working order and in compliance with all applicable federal, state, and local rules and regulations, including the operation thereof; (ii) provide a safe working environment for personnel; (iii) avoid placing materials in adjacent ditches or drainage structures; (iv) not solicit work from private citizens or others during the period of this Contract; (v) not, under any circumstance, mix debris hauled for others with debris hauled under this Contract -- the failure to comply with this provision will result in no payment to Contractor for any load with mixed-debris; (vi) meet with SAA and SAA's designated debris-monitor on an as-requested basis to update progress of Work and discuss issues; (vii) provide SAA or its debris-monitor with periodic verbal and written updates and reports; (viii) appropriately and adequately document all Work with required specificity pursuant to FEMA requirements in order to maximize reimbursement to SAA; and (ix) **not proceed with Work prior to coordination with SAA's designated debris-monitor.**
- e. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract. In order to maximize financial recovery by the SAA, and for purposes of compliance with applicable laws, rules, and regulations, Contractor shall comply with all debris eligibility and documentation criteria mandated, set forth, outlined, or required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) (i.e., the Public Assistance program), Florida Department of Emergency Management (FDEM), Florida Department of Transportation (FDOT), and all other applicable local, state, and federal agencies or entities.
- f. SAA gives Contractor no guarantee of any Project or any specific amount of Work under this Contract. SAA does not guarantee Contractor will be activated pursuant to this Contract. The Contract is a pre-event agreement that will be activated by SAA through a Notice to Proceed following an emergency or disaster situation. No compensation will accrue to Contractor unless and until the Contract is activated by the SAA.

3. COMMENCEMENT AND COMPLETION DATES.

- a. This Contract is effective beginning May 1, 2023, continuing for a term of three years thereafter unless sooner terminated as herein provided. This contract is eligible for two (2) additional two-year contract extensions after the initial contract term at the sole discretion of the Authority. Any price increase must be disclosed in writing to the Sebring Airport Authority Finance Director ninety (90) days in advance of any extension. In the event Work is being performed when a term expires, the Contract will automatically extend for

a period of time reasonable for Contractor to complete the Work, in the Authority's discretion but for no greater than 12 months, and prices shall remain as bid during such emergency continuation of contract.

- b. Contractor shall provide Authority with an emergency on-call telephone number that may be utilized by the Authority 24-hours a day, 365 days a year to contact the Contractor. The Contractor shall immediately respond to the Authority and shall have personnel on-site and commencing Work no less than twenty-four (24) hours after notification. Failure to timely mobilize or commence Work may result in a penalty. The Authority will issue to Contractor a Notice to Proceed containing a work order and work task assignment as soon as reasonably practicable. Contractor shall provide the Authority a written estimated Project budget with a Not-to-Exceed amount and estimated date or dates of completion within forty-eight (48) hours of receipt of the Notice to Proceed. The estimated dates of completion may be extended by SAA upon written request of Contractor.
- c. Due to the emergency nature and damage control required for disasters, delays in Contractor's response is not acceptable. Time is of the essence in this Contract. Contractor shall be responsible for completing all Work in an expedited manner, including the clearing, processing, and disposal of all eligible debris, and the reclamation of the TDSRS.

4. CONTRACT PRICE AND PAYMENT. Payment under this Contract is based on actual Work performed and properly documented pursuant to the pricing lists set forth in the Contract Documents. Such pricing includes all costs for labor, materials, equipment, machinery, tools, apparatus, and transportation necessary to perform the Work; **emergency service charges or fees are not permitted.** SAA reserves the right to deduct from any invoice an amount for defective or nonconforming Work or for Work not provided but invoiced. Payment will be made only for activities related to eligible debris as defined by FEMA. SAA's authorization of Contractor's estimated Project budget and Not-to-Exceed amount is required prior to performance of Work. It is the Contractor's sole responsibility to manage Project costs in adherence to the Not-to-Exceed amount. SAA will not be liable for more than the Not-to-Exceed amount. To the extent SAA pays Contractor for any Work later found not to be reimbursable for failure to comply with FEMA requirements, Contractor shall reimburse SAA for such amounts.

5. PAYMENTS TO CONTRACTOR.

- a. SAA shall establish a schedule for submittal of invoices from Contractor given the uniqueness of each Project. Contractors shall submit invoices regularly and for no more than 30-day periods. Contractor's invoices must be of appropriate quality detail to satisfy FEMA, FDOT, or FHWA requirements and audits. Contractor's invoices shall be accompanied by appropriate supporting documentation. SAA may accept or reject any invoice. If SAA rejects an invoice, it will indicate to Contractor the reason for rejection.

- b. **Application for Payment.** Contractor shall make application for payment based upon percentages of completion in the amount of ninety percent (90%) of the Work completed up to the last day of the previous month, less the aggregate of previous payments. The remaining ten percent (10%) of the Work completed shall be retainage held by SAA until final completion of the Project. Once the Project has reached fifty percent (50%) completion, the retainage on future payments shall be five percent (5%). SAA's Executive Director must approve each payment request. Each payment application shall also:
- i. detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor;
 - ii. include a certification by Contractor that the Work performed was in complete accordance with the Contract Documents;
 - iii. include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract; and
 - iv. include executed partial and/or final payment bond waivers from all suppliers and subcontractors.

Withholding of Payments. Payments due to the Contractor may be withheld by SAA on account of defective Work not remedied, claims filed, failure of Contractor to make payments properly to subcontractor or for material or labor, failure to include appropriate documentation with invoices, or the reasonable belief of SAA that the Work to be performed under this Contract which remains unfinished cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or sufficient properly skilled workmen or materials of the proper quality or quantity necessary for the performance of the Work hereunder or fail in any respect to prosecute the Work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, SAA shall have the option, after three (3) days written notice to Contractor, and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by SAA to Contractor.

- c. Upon approval of the final invoice and satisfactory remediation of the TDSRS, Contractor shall invoice SAA for retainage.
6. **DRUG-FREE WORKPLACE.** Contractor acknowledges that SAA is a drug-free work place. Contractor covenants that all employees of Contractor working upon SAA property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
7. **WORKMANSHIP.** Contractor shall, in a good workman like manner, perform all Work and furnish all supplies and materials necessary and proper to complete the Work under this Contract, within the time specified herein, in accordance with the provisions of this Contract, including any specifications, plans, and drawings provided to Contractor. Contractor shall complete the Work to the satisfaction of SAA. Contractor shall promptly repair, at its sole

cost, any damage caused, in whole or in part, by Contractor or its agents or subcontractors during performance of the Work.

- 8. LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work and the protection of persons and property. Contractor shall also maintain all licenses and permits required for the Work hereunder in an active status, including licenses and permits related to Contractor's vehicles, trailers, and equipment. Contractor shall ensure that all Contractor's employees, agents, representatives, and subcontractors have and maintain all licenses and permits required for performance of Work. Contractor shall perform the Work in compliance with all federal contract provisions required by FEMA or outlined or referred to in 2 CFR § 200.318 through § 200.326. Contractor shall perform work in compliance with all provisions of FHWA Form 1273, which is attached hereto as Attachment B and incorporated herein by reference. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
- 9. SUSPENSION OF WORK.** At any time and without cause, SAA may suspend the Work or any portion thereof for a period of no more than thirty (30) days upon written notice to Contractor. SAA's notice shall provide the date upon which the Work shall be resumed, and Contractor shall resume Work on the date so fixed.
- 10. TERMINATION OF CONTRACT; CONVENIENCE OR EVENT OF BREACH.** SAA may, by written notice, terminate this Contract in whole or in part at any time, either for SAA's convenience or because of Contractor's default or breach, including but not limited to, failure to perform any material provision or portion of the Contract Documents, failure to pay vendors, suppliers, subcontractors or sub-subcontractors as required, failure to adhere to FEMA requirements, failure to adhere to applicable laws, rules, ordinances, and regulations, or failure to undertake adequate safety measures during the performance of a Project. Upon receipt of such notice of termination, Work shall be immediately discontinued (unless the notice directs otherwise). SAA will only pay Contractor for Work completed up to the time of termination, less the amount of reasonable damages suffered by SAA by reason of Contractor's failure to abide by the terms of this Contract. Notwithstanding the above, Contractor is not relieved of liability to the SAA for damages sustained by the SAA by virtue of any breach of this Contract by Contractor and SAA may withhold any payments to Contractor for the purpose of setoff until such time as the amount of damages due the SAA from Contractor is determined. The rights and remedies of SAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- 11. LIQUIDATED DAMAGES.**

 - a. Contractor and SAA acknowledge that in the event Contractor fails to commence Work or timely complete the Work by the dates established therefor, SAA will incur substantial damages by loss of use or further deterioration of buildings and property and dangers to life, public health, and safety, and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the

amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that SAA would incur in such a situation. Such liquidated damages shall be the sole and exclusive remedy of SAA for Contractor's failure to timely commence or complete Work, and SAA hereby waives all other remedies available at law or in equity with respect to losses resulting from late commencement and completion. The amount of liquidated damages calculated hereunder does not include any penalty.

- b. If Contractor fails to timely commence the Work as set forth herein, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay. If Contractor fails to achieve timely completion of the Work, which period of completion may be extended upon written agreement of SAA, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay until Work is substantially complete and then \$150 per calendar date for each calendar day until final completion of the Work. For avoidance of any doubt, the above provisions apply to the timely opening and successful reclamation of the TDSRS.

12. INDEPENDENT CONTRACTOR. The parties expressly recognize that the relationship between SAA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of SAA.

13. INSURANCE. Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and approved by SAA:

- a. **Commercial General Liability.** Commercial general liability insurance shall be carried with limits of at least \$1,000,000 of combined single limit for Bodily Injury and Property Damage and \$1,000,000 annual aggregate. Coverage shall include Premises and Operations, Broad Form Contractual, Products and Completed Operations, Owners and Contractors Protective Liability (also known as Independent Contractors Liability), and when applicable include Explosion, Collapse and Underground Damage (XCU), and shall include Contingent Liability against claims arising out of subcontractors with the same minimum amount.
- b. **Automobile Liability.** Vehicle liability insurance shall be carried with limits of at least \$1,000,000 for Bodily Injury and Property Damage for "all autos" including owned, hired and non-owned autos.
- c. **Workers' Compensation.** Coverage to apply for all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease.

d. **Evidence of Insurance.** Contractor shall furnish SAA with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Sebring Airport Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. If Contractor is exempt from workers' compensation requirements, it shall submit a DWC-252 Certificate Exemption Form. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. All certificates of insurance must be on file with and approved by SAA before the commencement of any work activities.

14. SUBCONTRACTS. A portion of a Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Contract applicable to the Work performed by such subcontractor, including, but not limited to, insurance requirements except for excess/umbrella coverage, compliance with laws and regulations, and indemnification of SAA. Contractor shall provide SAA with a list of subcontractors Contractor intends to use, and SAA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request and require changes to such subcontractor agreements as SAA deems necessary. SAA shall not be obligated to pay any subcontractor under any circumstance.

15. NOTICES. Whenever any notice is required or permitted by this contract to be given, such notice shall be hand-delivered or given by certified mail or overnight delivery addressed to:

Contractor:
Brain Smallwood
10142 Parkside Dr., Suite 500
Knoxville, TN 37922
251-525-0011
bsmallwood@pandj.com

SAA:
Executive Director
Sebring Airport Authority
128 Authority Lane
Sebring, FL 33870

Notice shall be considered given when deposited with the U.S. Postal Service or commercial carrier, postage prepaid. Each party will be responsible for notifying the other of any change in their address.

16. ASSIGNMENT. Contractor shall not assign this contract, in whole or in part, or any monies due or to become due hereunder, without the written consent of SAA.

17. ACCEPTANCE AND WARRANTY.

- a. Acceptance of the Work and final payment shall not relieve Contractor of the obligation to remedy Work that does not comply with the Contract Documents. Contractor shall promptly repair all defects at Contractor's expense.
- b. Contractor warrants to SAA that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these standards may be considered defective.

- 18. CORRECTION OF WORK.** Contractor shall promptly correct all Work determined to be defective or failing to conform to the Contract Documents. Contractor shall bear all costs of correcting such defective Work.
- 19. DAMAGE TO PROPERTY.** Contractor agrees that all SAA or third-party owned property, including above and underground utilities, that is damaged by Contractor's personnel, agents, subcontractors, or equipment shall be promptly repaired or replaced, at Contractor's expense. SAA may withhold final payment of retainage to Contractor until all claims, damages, injury, or losses from such are resolved. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to a) persons who may be affected by the Work; b) all the Work and materials and equipment; and c) other property, including trees, shrubs, lawns, and pavements.
- 20. TAXES.** Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work under this Contract.
- 21. PERMITS, FEES AND NOTICES.** Contractor shall secure and pay for all permits and licenses necessary for the proper execution and completion of the Work which are in effect as of the date of execution of this Contract. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If Contractor performs any Work which is contrary to such laws, ordinances, rules and regulations in effect as of the date of execution of this Contract, then Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 22. RESPONSIBILITY FOR THOSE PERFORMING THE WORK.** Contractor shall be responsible to SAA for the acts and omissions of all its employees, agents, and all subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.
- 23. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.
- 24. SAFETY AND HEALTH REGULATIONS.** Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act and such other rules and regulations as may be applicable to the Work.

- a. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- b. Contractor shall take all necessary precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
 - i. All employees on the Work and all other persons who may be affected thereby;
 - ii. All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or any of its subcontractors or sub-subcontractors; and
 - iii. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.
- c. Any injury to persons or damage to property shall be immediately repaired or remedied by Contractor, subject to the limits of indemnification provided by Contractor herein.
- d. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss.
- e. Contractor and SAA shall mutually agree on appropriate staging areas for the materials and equipment for the Project so as to not unreasonably encumber other real property.

25. INDEMNIFICATION AND HOLD HARMLESS.

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the SAA, its officers, Board members, agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. In any and all claims against the SAA, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall be limited to ten million dollars (\$10,000,000.00) and

shall not be limited in any way to the agreed upon contract price as shown in this contract or the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This provision shall survive the termination or expiration of this Contract.

- b. The duty to defend under this paragraph (or elsewhere in the Contract) is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this paragraph (or elsewhere in the Contract) will survive the expiration or earlier termination of this Contract.

26. DEFAULT COSTS AND EXPENSES. Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including SAA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.

27. BINDING EFFECT. This Contract shall bind and inure to the benefit of the successors and assigns of each of the parties.

28. GOVERNING LAW. This Contract will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles thereof, and the parties agree to submit to the jurisdiction of the Tenth Judicial Circuit, in and for Highlands County, Florida.

29. PERFORMANCE AND PAYMENT BONDS. Contractor shall provide performance and payment bonds, each in the full amount of the Not-to-Exceed amount, within forty-eight (48) hours after receipt of the Notice to Proceed. SAA may require the posting of additional performance and payment bonds or riders increasing the existing bond amounts as a result of any increase in the estimated value of the Project.

30. CONFLICTS OF INTERESTS; GIFTS. The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

31. PUBLIC ENTITY CRIMES. By signing this contract, Contractor certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: “A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.” By signing below, Contractor certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.

32. SCRUTINIZED COMPANIES. By signing below, Contractor certifies that (a) it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, and is not engaged in a boycott of Israel; or (b) if the Contract is valued at one-million dollars or more Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes, and is not engaged in business operations in Cuba or Syria.

For any contract for goods or services of \$1 million or more, SAA may terminate the contract at its option if Contractor is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. For any contract for goods or services of any amount, SAA may terminate the contract at its option if contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33. PUBLIC RECORDS. The Contractor is required to keep and maintain public records that ordinarily and necessarily would be required by SAA in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that SAA would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. This agreement can be unilaterally cancelled, and no further payments made by SAA, if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received in conjunction with this Contract pursuant to the provisions of Chapter 119, Florida Statutes. The Contractor must ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to SAA all public records in possession of the contractor upon termination of the

contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SAA in a format that is compatible with the information technology systems of the public agency. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT BEVERLY K. GLARNER, THE CUSTODIAN OF PUBLIC RECORDS at 863-314-1301, bev@sebring-airport.com or 128 AUTHORITY LANE, SEBRING, FL 33870.**

34. EVERIFY. All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Contractor's employees hired during the term of this Agreement.

35. TIME. Time is of the essence of this Contract.


36. ENTIRE AGREEMENT AND MODIFICATIONS. The parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Contract is fully integrated, supersedes all prior agreements and understandings, and contains the entire agreement between the parties. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Contract unless reduced to writing and signed by the parties.

37. MULTIPLE ORIGINALS. This Contract is executed in multiple copies, each of which shall be deemed an original.

[Signatures on the following page]


AGREED TO this 18th day of May, 2023.

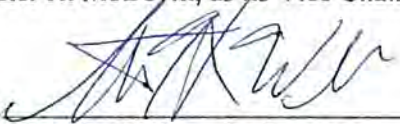
Two Witnesses as to SAA:

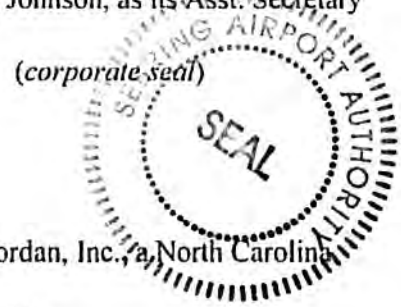

(Printed Name) Beverly K. Glarner


(Printed Name) Colleen Plonsky

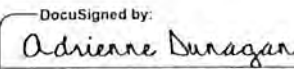
SEBRING AIRPORT AUTHORITY, a body politic and corporate of the State of Florida

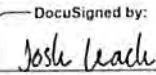
By: 
 Mark Andrews, as its Chair or
 Peter H. McDevitt, as its Vice Chair

Attest: 
 Stanley H. Wells, as its Secretary or
 D. Craig Johnson, as its Asst. Secretary

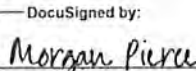


Two Witnesses as to Contractor:

DocuSigned by:

(Printed Name) Adrienne Dunagan

DocuSigned by:

(Printed Name) Josh Leach

Phillips and Jordan, Inc., a North Carolina corporation

DocuSigned by:
By: 
Morgan Pierce, as its President



Attachment A – Pricing Schedule (from Contractor’s proposal)



8. PRICE PROPOSAL FORM

**RFP #23-03 DISASTER DEBRIS REMOVAL & DISPOSAL SERVICES
PRICE PROPOSAL FORM**

NOTE: Respondents are to make no changes to the table below and are to fill it out completely. Values must be provided for all categories below or your response may be deemed non-responsive.

FEE SCHEDULE		
1.	Vegetative storm debris picked up at the designated work zone, hauled to and dumped at a Temporary Debris Storage and Reduction Site (TDSRS).	\$ /CY 8.75
2.	Construction and Demolition debris hauled to and dumped at an Authority approved disposal site or landfill.	\$ /CY 8.75
3.	Validated load hauled tickets from the TDSRS for final processed vegetative debris at an Authority approved recycling facility.	\$ /CY 6.00
4.	Tipping fees/disposal costs for Green Waste shall be paid by Contractor, and actual incurred cost shall be invoiced to the Authority for reimbursement.	\$ /CY 0.00
5.	Management, Processing and Loading of all eligible debris and/or residue at the TDSRS. Including locating, leasing (if required), preparing and layout of site; management, maintenance and operation of the TDSRS; the receiving, sorting, segregation, processing and reduction of vegetative debris (chipping or grinding or burning as directed by the Authority); furnishing materials, supplies, labor, tools and equipment necessary to perform services; maintenance of internal roadways, providing traffic control, dust control, erosion control, articulated boom lift(s), lighting, hazardous/toxic waste (HTW) containment areas, fire protection, all required permits, environmental monitoring, and safety measures; loading reduced/stored debris and initiating load tickets for final disposition; and Closure and remediation of the TDSRS.	\$ /CY 5.50
6.	Pick up and dispose of hazardous materials.	\$ /lb. 8.00
7.	Dead Animal Collection, Transportation & Disposal.	\$ /lb. 3.00
8.	<u>Hazardous trees</u> – Trees will be evaluated by the Authority and be designated to be cut down and hauled to the TDSRS for reduction. Trees will be measured 3' above the ground.	
	Trees with branches remaining – FEE ONLY TO CUT TREE	
	6-12" Diameter	\$ /tree 50.00
	13-24" Diameter	\$ /tree 130.00
	25-48" Diameter	\$ /tree 290.00
	> 48" Diameter	\$ /tree 450.00
9.	Stumps up to 24" in diameter.	\$ /EA 100.00
	Stumps over 24" in diameter (requires Authority approval).	\$ /EA 250.00



**DISASTER DEBRIS REMOVAL
AND DISPOSAL SERVICES
RFP #23-01**

10.	<u>Hangers</u> – Hangers will be considered any hanging/damaged remaining in the tree(s) above the ROW of 2” or greater diameter. The Contractor, at the direction of the Authority, will remove hangers for a unit price per hanger.	
	2-4” Hanger	\$ 40 /hanger
	5-12” Hanger	\$ 50 /hanger
	> 12” Hanger	\$ 70 /hanger
11.	<u>Private Property Demolition and Debris Removal</u> – The Contractor shall operate within the Public Right-of-Way (ROW) only as identified and directed by the Authority. Operations beyond the ROW on private property shall be only as necessary to abate imminent and significant threats to the public health and safety of the community and shall include, but is not limited to, the demolition of structures and the removal and relocation of the debris to the public ROW.	\$ /CY 10.50
12.	Tipping fees/disposal costs for construction and demolition (C&D) debris shall be paid by the Contractor.	\$0.00
13.	<u>Fallen Trees</u> – The Contractor shall cut a fallen tree, which extends onto the ROW from private property, at the point where it enters the ROW. Vegetative debris will be placed on the ROW for collection.	Price Included
14.	<u>Fill Dirt</u> – As identified and directed by the Authority, the Contractor shall place compatible fill dirt in ruts created by equipment and vehicles, holes created by removal of hazardous stumps and other areas that pose an imminent and significant threat to public health and safety.	\$ /CY 20.00
15.	<u>White Goods</u> – The Contractor shall recycle or dispose of all eligible white goods in accordance with all federal, state and local rules, regulations and laws.	\$ /unit 70.00
16.	<u>Freon Recovery</u> – The Contractor SHALL REMOVE AND RECOVER Freon from any white goods, such as refrigerators, freezers or air conditioners, at the TDSRS or final disposition site in accordance with all federal, state and local rules, regulations and laws.	\$ /unit 20.00
17.	<u>Training and Assistance</u> Sessions for all key Authority personnel and assistance in all disaster debris recovery planning efforts as requested.	Price Included
18.	<u>Preliminary Damage Assessment</u> – Determining the impact and magnitude of the disaster event before federal assistance is requested, identifying damaged locations and facilities, distinguishing between pre-disaster damage and disaster – generated damage, documenting eligible costs and describing the physical and financial impact of the disaster.	Price Included
19.	<u>Mobilization and Demobilization</u> – All arrangements necessary to mobilize and demobilize the Contractor’s labor force and machinery needed to perform the Scope of Services contained herein shall be made by the Contractor.	Price Included
20.	<u>Temporary Storage of Documents</u> – The Contractor shall provide storage of daily or disaster-related documents and reports for protection during the disaster event.	Price Included
21.	<u>Debris Planning Efforts</u> – The Contractor shall assist in all disaster debris recovery planning efforts as requested by the Authority. These planning efforts shall include, but are not limited to, development of a <i>debris management</i> plan, identification of adequate temporary debris storage and reduction sites, estimation of debris quantities, and emergency action plans for debris clearance <u>following</u> a disaster event.	Price Included



**DISASTER DEBRIS REMOVAL
AND DISPOSAL SERVICES**
RFP #23-01

22.	<u>Closure and Remediation of the TDSRS</u> – The Contractor shall remove all Contractor equipment and temporary structures and shall dispose of all residual debris from the TDSRS at an approved final disposition site. <u>The Contractor is responsible for the reclamation and remediation of the TDSRS site to its original state prior to use by the Contractor.</u>	Price Included
23.	<u>Reporting and Documentation</u> – The Contractor shall provide and submit to the Authority all reports and documents as may be necessary to <u>adequately</u> document the <u>Debris Recovery Services</u> in accordance with FEMA requirements.	Price Included

Attachment B – FHWA Form 1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. 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 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own

organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to

employees, applicants for employment and potential employees.

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

unless authorized by the department or agency entering into this transaction.

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

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

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

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

* * * * *

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

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

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

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

Sebring Airport Authority Agenda Item Summary

Meeting Date: May 18, 2023

Presenter: Mike Willingham

Agenda Item: RFP 23-02 Disaster Debris Monitoring Services – Award and Contract

Background: Staff advertised RFP 23-02 Disaster Debris Monitoring Services on March 3, 2023. One (1) proposal was received and proposer fulfilled the RFP requirements. Selection Committee is recommending approval, award and contract to Atkins North America, Inc.

Requested Motion: Move to approve and authorize the Chairman or Vice Chairman and Secretary or Assistant Secretary to execute contract.

Board Action:

Approved _____

Denied _____

Tabled _____

DISASTER DEBRIS MONITORING SERVICES CONTRACT

(SEBRING AIRPORT AUTHORITY REQUEST FOR PROPOSALS NO. RFP 23-02)

THIS IS AN AGREEMENT between the **SEBRING AIRPORT AUTHORITY**, a body politic and corporate of the State of Florida (herein called “SAA” or “Authority”) and Atkins North America, Inc., a Florida ☐ corporation or ☐ limited liability company (herein called “Contractor”).

1. PREMISE. The Authority requested proposals from qualified contractors to assist in the monitoring of disaster debris collection and disposal operations, ensuring compliance with Federal requirements (FEMA and FHWA) and the Authority’s debris management plan as related to contractor oversight, truck measurements, load ticket preparation and issuing, report preparation, and project administration to effectuate maximum financial recovery for the Authority. This Contract is a pre-event agreement, which results in no immediate costs to the Authority. Contractor has the preferred qualifications to perform these services, and SAA would like for Contractor to perform the work and Contractor would like to do so on the terms and conditions set forth herein. In the event of an applicable emergency, the Authority intends to seek reimbursement from federal and/or state agencies for the activities performed under this Contract, including reimbursement through the Public Assistance Program of the Federal Emergency Management Agency (FEMA) and other applicable federal and state programs from agencies such as the Federal Highway Administration (FHWA).

2. WORK.

- a. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish all materials, labor, tools, equipment, superintendence, security, insurance, transportation, fuel, power, light, telephone, sanitary facilities, and all other accessories, facilities, incidentals, and services necessary to provide pre-disaster preparation assistance and post-disaster monitoring and recording of all debris removal and disposal activities of the Authority (the “Work” or “Project”).
- b. The Work shall be performed in accordance with: (i) the conditions, activities, and prices stated in this Contract and Request for Proposals **RFP 23-02** (including addenda, if any, and all of the “Legal Provisions” and “Other” provisions set forth in Section IV); (ii) all applicable laws, rules, ordinances, and regulations; (iii) Contractor’s bid/proposal (including the pricing schedule, which is attached hereto as Attachment A); and (iv) the Legal Provisions – each of which are made a part hereof by reference and collectively constitute this Contract (herein called the “Contract Documents”).
- c. The Work contemplates Contractor’s personnel monitoring debris loading sites and a debris management / disposal site in Highlands County, Florida. Contractor shall work closely with the Authority and its debris-hauler and shall perform related services and activities following a disaster as more specifically set forth in the Contract Documents.

- d. In performance of the Work, Contractor shall (i) monitor debris removal and disposal efforts and activities to ensure compliance with state and federal requirements (including FEMA); (ii) provide a safe working environment for personnel; (iii) meet with SAA and SAA's designated debris-hauler(s) on an as-requested basis to update progress and issues concerning debris removal; (iv) provide SAA with periodic verbal and written updates and reports concerning debris removal and disposal operations and progress; and (v) appropriately and adequately document all Work with required specificity pursuant to FEMA requirements in order to maximize reimbursement to SAA.
- e. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract. In order to maximize financial recovery by the SAA, and for purposes of compliance with applicable laws, rules, and regulations, Contractor shall comply with all debris eligibility and documentation criteria mandated, set forth, outlined, or required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) (i.e., the Public Assistance program), Florida Department of Emergency Management (FDEM), and all other applicable local, state, and federal agencies or entities.
- f. SAA gives Contractor no guarantee of any Project or any specific amount of Work under this Contract. SAA does not guarantee Contractor will be activated pursuant to this Contract. The Contract is a pre-event agreement that will be activated by SAA through a Notice to Proceed following an emergency or disaster situation. No compensation will accrue to Contractor unless and until the Contract is activated by the SAA.

3. COMMENCEMENT AND COMPLETION DATES.

- a. This Contract is effective beginning May 1, 2023, continuing for a term of three years thereafter unless sooner terminated as herein provided. This contract is eligible for two (2) additional two-year contract extensions after the initial contract term at the sole discretion of the Authority. Any price increase must be disclosed in writing to the Sebring Airport Authority Finance Director ninety (90) days in advance of any extension. In the event Work is being performed when a term expires, the Contract will automatically extend for a period of time reasonable for Contractor to complete the Work, in the Authority's discretion but for no greater than 12 months, and prices shall remain as bid during such emergency continuation of contract.
- b. Contractor shall provide Authority with an emergency on-call telephone number that may be utilized by the Authority 24-hours a day, 365 days a year to contact the Contractor. The Contractor shall immediately respond to the Authority and shall have personnel on-site and commencing Work no less than twenty-four (24) hours after notification. Failure to timely mobilize or commence Work may result in a penalty. The Authority will issue to Contractor a Notice to Proceed containing a work order and work task assignment as soon as

reasonably practicable. Contractor shall provide the Authority a written estimated Project budget with a Not-to-Exceed amount and estimated date or dates of completion within forty-eight (48) hours of receipt of the Notice to Proceed. The estimated dates of completion may be extended by SAA upon written request of Contractor.

- c. Due to the emergency nature and damage control required for disasters, delays in Contractor's response is not acceptable. Time is of the essence in this Contract. Contractor shall be responsible for completing all Work in an expedited manner.

4. **CONTRACT PRICE AND PAYMENT.** Payment under this Contract is based on actual Work performed and properly documented pursuant to the pricing lists set forth in the Contract Documents. Such pricing includes all costs for labor, materials, equipment, machinery, tools, apparatus, and transportation necessary to perform the Work; emergency service charges or fees are not permitted. SAA reserves the right to deduct from any invoice an amount for defective or nonconforming Work or for Work not provided but invoiced. The estimated Project budget provided in writing by Contractor shall be appended to the Notice to Proceed for the Project and shall include a Not-to-Exceed amount. It is the Contractor's sole responsibility to manage Project costs in adherence to the Not-to-Exceed amount. SAA will not be liable for more than the Not-to-Exceed amount.

5. **PAYMENTS TO CONTRACTOR.**

- a. SAA shall establish a schedule for submittal of invoices from Contractor given the uniqueness of each Project. Contractors shall submit invoices regularly and for no more than 30-day periods. Contractor's invoices must be of appropriate quality detail to satisfy FEMA or FHWA requirements and audits. Contractor's invoices shall be accompanied by appropriate supporting documentation. SAA may accept or reject any invoice. If SAA rejects an invoice, it will indicate to Contractor the reason for rejection.
- b. SAA will retain 10% of the payment from each invoice until such time as the Project is completed to the SAA's satisfaction and all subcontractors and material suppliers, if any, verify that they have been paid.

Application for Payment. On or about the first day of each month, Contractor shall make application for payment based upon percentages of completion in the amount of ninety percent (90%) of the Work completed up to the last day of the previous month, less the aggregate of previous payments. The remaining ten percent (10%) of the Work completed shall be retainage held by SAA until final completion of the Project. Once the Project has reached fifty percent (50%) completion, the retainage on future payments shall be five percent (5%). SAA's Executive Director must approve each payment request. Each payment application shall also:

- i. detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor;
- ii. include a certification by Contractor that the Work performed was in complete accordance with the Contract Documents;
- iii. include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract; and
- iv. include executed partial and/or final payment bond waivers from all suppliers and subcontractors.

Withholding of Payments. Payments due to the Contractor may be withheld by SAA on account of defective Work not remedied, claims filed, failure of Contractor to make payments properly to subcontractor or for material or labor, failure to include appropriate documentation with invoices, or the reasonable belief of SAA that the Work to be performed under this Contract which remains unfinished cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or sufficient properly skilled workmen or materials of the proper quality or quantity necessary for the performance of the Work hereunder or fail in any respect to prosecute the Work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, SAA shall have the option, after three (3) days written notice to Contractor, and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by SAA to Contractor.

- c. Upon approval of the final invoice, Contractor shall invoice SAA for retainage.
6. **DRUG-FREE WORKPLACE.** Contractor acknowledges that SAA is a drug-free work place. Contractor covenants that all employees of Contractor working upon SAA property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
 7. **WORKMANSHIP.** Contractor shall, in a good workman like manner, perform all Work and furnish all supplies and materials necessary and proper to complete the Work under this Contract, within the time specified herein, in accordance with the provisions of this Contract, including any specifications, plans, and drawings provided to Contractor. Contractor shall complete the Work to the satisfaction of SAA. Contractor shall promptly repair, at its sole cost, any damage caused, in whole or in part, by Contractor or its agents or subcontractors during performance of the Work.
 8. **LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work and the protection of persons and property. Contractor shall also maintain all licenses and permits required for the Work hereunder in an active status, including licenses and permits related to Contractor's vehicles, trailers, and equipment. Contractor shall ensure that all Contractor's employees, agents,

representatives, and subcontractors have and maintain all licenses and permits required for performance of Work. Contractor shall perform the Work in compliance with all federal contract provisions required by FEMA or outlined or referred to in 2 CFR § 200.318 through § 200.326. Contractor shall perform work in compliance with all provisions of FHWA Form 1273, which is attached hereto as Attachment B and incorporated herein by reference. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

9. **SUSPENSION OF WORK.** At any time and without cause, SAA may suspend the Work or any portion thereof for a period of no more than thirty (30) days upon written notice to Contractor. SAA's notice shall provide the date upon which the Work shall be resumed, and Contractor shall resume Work on the date so fixed.

10. **TERMINATION OF CONTRACT; CONVENIENCE OR EVENT OF BREACH.** SAA may, by written notice, terminate this Contract in whole or in part at any time, either for SAA's convenience or because of Contractor's default or breach, including but not limited to, failure to perform any material provision or portion of the Contract Documents, failure to pay vendors, suppliers, subcontractors or sub-subcontractors as required, failure to adhere to FEMA requirements, failure to adhere to applicable laws, rules, ordinances, and regulations, or failure to undertake adequate safety measures during the performance of a Project. Upon receipt of such notice of termination, Work shall be immediately discontinued (unless the notice directs otherwise). SAA will only pay Contractor for Work completed up to the time of termination, less the amount of reasonable damages suffered by SAA by reason of Contractor's failure to abide by the terms of this Contract. Notwithstanding the above, Contractor is not relieved of liability to the SAA for damages sustained by the SAA by virtue of any breach of this Contract by Contractor and SAA may withhold any payments to Contractor for the purpose of setoff until such time as the amount of damages due the SAA from Contractor is determined. The rights and remedies of SAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

11. LIQUIDATED DAMAGES.

- a. Contractor and SAA acknowledge that in the event Contractor fails to commence Work or timely complete the Work by the dates established therefor, SAA will incur substantial damages, and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that SAA would incur in such a situation. Such liquidated damages shall be the sole and exclusive remedy of SAA for Contractor's failure to timely commence or complete Work, and SAA hereby waives all other remedies available at law or in equity with respect to losses resulting from late commencement and completion. The amount of liquidated damages calculated hereunder does not include any penalty.
- b. If Contractor fails to timely commence the Work as set forth herein, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar

day of delay. If Contractor fails to achieve timely completion of the Work, which period of completion may be extended upon written agreement of SAA, Contractor shall pay to SAA liquidated damages in the amount of \$500.00 per calendar day for each calendar day of delay.

12. INDEPENDENT CONTRACTOR. The parties expressly recognize that the relationship between SAA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of SAA.

13. INSURANCE. Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and approved by SAA:

- a. **Commercial General Liability.** Commercial general liability insurance shall be carried with limits of at least \$1,000,000 of combined single limit for Bodily Injury and Property Damage and \$1,000,000 annual aggregate. Coverage shall include Premises and Operations, Broad Form Contractual, Products and Completed Operations, Owners and Contractors Protective Liability (also known as Independent Contractors Liability), and when applicable include Explosion, Collapse and Underground Damage (XCU), and shall include Contingent Liability against claims arising out of subcontractors with the same minimum amount.
- b. **Automobile Liability.** Vehicle liability insurance shall be carried with limits of at least \$1,000,000 for Bodily Injury and Property Damage for "all autos" including owned, hired and non-owned autos.
- c. **Workers' Compensation.** Coverage to apply for all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease.
- d. **Evidence of Insurance.** Contractor shall furnish SAA with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Sebring Airport Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. If Contractor is exempt from workers' compensation requirements, it shall submit a DWC-252 Certificate Exemption Form. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. All certificates of insurance must be on file with and approved by SAA before the commencement of any work activities.

14. SUBCONTRACTS. A portion of a Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Contract applicable to the Work performed by such subcontractor, including, but not limited to, insurance requirements except for excess/umbrella coverage, compliance with laws and regulations, and indemnification of SAA. Contractor shall provide SAA with a list of subcontractors Contractor intends to use, and SAA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request and require changes to such subcontractor agreements as SAA deems necessary. SAA shall not be obligated to pay any subcontractor under any circumstance.

15. NOTICES. Whenever any notice is required or permitted by this contract to be given, such notice shall be hand-delivered or given by certified mail or overnight delivery addressed to:

Contractor:	SAA:
Kevin McCauley	Executive Director
1514 Broadway, Suite 202	Sebring Airport Authority
Fort Myers, FL 33901	128 Authority Lane
Kevin.mccauley@atkinsglobal.com	Sebring, FL 33870
310-985-7131	

Notice shall be considered given when deposited with the U.S. Postal Service or commercial carrier, postage prepaid. Each party will be responsible for notifying the other of any change in their address.

16. ASSIGNMENT. Contractor shall not assign this contract, in whole or in part, or any monies due or to become due hereunder, without the written consent of SAA.

17. ACCEPTANCE AND WARRANTY.

- a. Acceptance of the Work and final payment shall not relieve Contractor of the obligation to remedy Work that does not comply with the Contract Documents. As more fully set forth in the Contract Documents, Contractor warrants that the Work shall be free from defects in material and workmanship at the time of final completion and for a period of two (2) year from the date of final completion. Contractor shall promptly repair or correct all defects at Contractor's expense.
- b. Contractor warrants to SAA that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these standards may be considered defective.
- c. In addition to the Contractor's warranty, Contractor agrees that it will correct all Work which fails to conform to the aforesaid warranty in any respect and is discovered and communicated to Contractor during the progress of the Work or within the warranty period provided for in the Contract. However, if Contractor is unable or unwilling to make such correction then SAA may, at its sole option, make the necessary repairs or corrections and charge the cost thereof to Contractor. The terms of this warranty and correction obligation

shall inure to the benefit of the SAA and shall be in addition to any other rights, remedies or warranties, whether express or implied, available to the SAA under law or equity.

- d. Contractor further warrants that it will comply with all application and other requirements of each manufacturer, producer or supplier of materials and will ensure that any inspections or other requirements of a manufacturer producer or supplier for a warranty of the materials takes place. Contractor shall cause the manufacturers, producers, or suppliers of materials used in the performance of this Contract to issue product warranties.

18. CORRECTION OF WORK. Contractor shall promptly correct all Work determined to be defective or failing to conform to the Contract Documents. Contractor shall bear all costs of correcting such defective Work. If, within two years after the date of final completion, or within such other period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, any Work is found to be defective, Contractor shall correct it promptly after request from SAA to do so.

19. DAMAGE TO PROPERTY. Contractor agrees that all SAA or third-party owned property, including above and underground utilities, that is damaged by Contractor's personnel, agents, subcontractors, or equipment shall be promptly repaired or replaced, at Contractor's expense. SAA may withhold final payment of retainage to Contractor until all claims, damages, injury, or losses from such are resolved. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to a) persons who may be affected by the Work; b) all the Work and materials and equipment; and c) other property, including trees, shrubs, lawns, and pavements.

20. TAXES. Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work under this Contract.

21. PERMITS, FEES AND NOTICES. Contractor shall secure and pay for all permits and licenses necessary for the proper execution and completion of the Work which are in effect as of the date of execution of this Contract. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If either Contractor or SAA observes that any of the Contract Documents are at variance therewith in any respect, it shall promptly notify the other party, in writing, and any necessary changes shall be adjusted by appropriate modification. If Contractor performs any Work which is contrary to such laws, ordinances, rules and regulations in effect as of the date of execution of this Contract, then Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

22. RESPONSIBILITY FOR THOSE PERFORMING THE WORK. Contractor shall be responsible to SAA for the acts and omissions of all its employees, agents, and all

subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.

23. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

24. SAFETY AND HEALTH REGULATIONS. Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act and such other rules and regulations as may be applicable to the Work.

- a. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- b. Contractor shall take all necessary precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
 - i. All employees on the Work and all other persons who may be affected thereby;
 - ii. All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or any of its subcontractors or sub-subcontractors; and
 - iii. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.
- c. Any injury to persons or damage to property shall be immediately repaired or remedied by Contractor, subject to the limits of indemnification provided by Contractor herein.
- d. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. It shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including, securing materials for the Project, providing appropriate lighting and posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities. Contractor and SAA shall mutually agree on appropriate staging areas for the materials and equipment for the Project so as to not unreasonably encumber other real property.

25. INDEMNIFICATION AND HOLD HARMLESS.

- a. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees performing the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the SAA, its agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. In any and all claims against the SAA, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall be limited to ten million dollars (\$10,000,000.00) and shall not be limited in any way to the agreed upon contract price as shown in this contract or the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.
- b. The foregoing indemnity from Contractor shall be applicable to all losses, damages, expenses or claims for damage or injury to any person or property, resulting from their negligence, recklessness or intentional wrongful misconduct of Contractor, and persons employed or utilized by Contractor relating to the performance of Work as described in this Contract. This indemnification provision is incorporated by reference into the Contract Documents. The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The foregoing obligations of the Contractor are in addition to his other obligations under this Contract. This provision shall survive the termination or expiration of this Contract.

c. The duty to defend under this paragraph (or elsewhere in the Contract) is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this paragraph (or elsewhere in the Contract) will survive the expiration or earlier termination of this Contract until it is determined by final judgment that an action against any indemnified party for the matter indemnified hereunder is fully and finally barred by the applicable statute of limitations.

26. DEFAULT COSTS AND EXPENSES. Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including SAA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.

27. BINDING EFFECT. This Contract shall bind and inure to the benefit of the successors and assigns of each of the parties.

28. GOVERNING LAW. This Contract will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles thereof, and the parties agree to submit to the jurisdiction of the Tenth Judicial Circuit, in and for Highlands County, Florida.

29. PERFORMANCE AND PAYMENT BONDS. Contractor shall provide performance and payment bonds, each in the full amount of the Not-to-Exceed amount, within forty-eight (48) hours after receipt of the Notice to Proceed. SAA may require the posting of additional performance and payment bonds as a result of any increase in the estimated value of the Project.

30. CONFLICTS OF INTERESTS; GIFTS. The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

31. PUBLIC ENTITY CRIMES. By signing this contract, Contractor certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to

provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.” By signing below, Contractor certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.

- 32. SCRUTINIZED COMPANIES.** By signing below, Contractor certifies that (a) it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, and is not engaged in a boycott of Israel; or (b) if the Contract is valued at one-million dollars or more Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes, and is not engaged in business operations in Cuba or Syria.

For any contract for goods or services of \$1 million or more, SAA may terminate the contract at its option if Contractor is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. For any contract for goods or services of any amount, SAA may terminate the contract at its option if contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

- 33. PUBLIC RECORDS.** The Contractor is required to keep and maintain public records that ordinarily and necessarily would be required by SAA in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that SAA would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. This agreement can be unilaterally cancelled, and no further payments made by SAA, if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received in conjunction with this Contract pursuant to the provisions of Chapter 119, Florida Statutes. The Contractor must ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to SAA all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SAA in a format that is compatible with the information technology systems of the public agency. **IF THE CONTRACTOR HAS QUESTIONS REGARDING**

THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT BEVERLY K. GLARNER, THE CUSTODIAN OF PUBLIC RECORDS at 863-314-1301, bev@sebring-airport.com, or 128 AUTHORITY LANE, SEBRING, FLORIDA 33870.

- 34. EVERIFY.** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Contractor's employees hired during the term of this Agreement.
- 35. TIME.** Time is of the essence of this Contract.
- 36. ENTIRE AGREEMENT AND MODIFICATIONS.** The parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Contract is fully integrated, supersedes all prior agreements and understandings, and contains the entire agreement between the parties. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Contract unless reduced to writing and signed by the parties.
- 37. MULTIPLE ORIGINALS.** This Contract is executed in multiple copies, each of which shall be deemed an original.

[Signatures on the following page]

AGREED TO this 18th day of May 2023.

Two Witnesses as to SAA:

SEBRING AIRPORT AUTHORITY, a body politic and corporate of the State of Florida

Beverly K. Glarner
(Printed Name) **Beverly K. Glarner**

By: [Signature]
 Mark Andrews, as its Chair or
 Peter H. McDevitt, as its Vice Chair

Colleen Florsky
(Printed Name) **Colleen Florsky**

Attest: [Signature]
 Stanley H. Wells, as its Secretary or
 D. Craig Johnson, as its Asst. Secretary

(corporate seal)



Two Witnesses as to Contractor:

Atkins North America, Inc., a Florida corporation or limited liability company

76 [Signature] 5/9/2023
(Printed Name) **IGEVIN MCLAULEY**

By: [Signature] 5/9/2023
Darin Larson, as its Vice President

[Signature] 5/9/2023
(Printed Name) **JAMES GRIFFIN**

RFP #23-02 DISASTER DEBRIS MONITORING SERVICES

PRICE PROPOSAL FORM

Provide an hourly price for each of the positions listed below based on the "Potential Scenario" set forth in the RFP. If your company provides other related positions, please add as appropriate. If you believe the estimated number of hours is not demonstrative of the "Potential Scenario", please indicate and provide a written explanation. Total price is for evaluation purposes only.

Item	Description	Cost per Hour	Estimate of Hours	Price
1.	Lead Monitors (1)	\$65	40	\$2,600.00
2.	Site Monitors (2)	\$35	300	\$10,500.00
3.	Field Monitors (2)	\$55	120	\$6,600.00
4.	Project manager/Liaison	\$165	25	\$4,125.00
5.	Officer			
6.	Grants manager/ Invoice Analyst	\$90	25	\$2,250.00
TOTAL PRICE				\$26,075.00
Notes/Explanation: Please refer page no. 82 for the explanation on additional positions and hours				

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Item	Description		Price
7.	Mobilization/Demobilization	Lump Sum	\$0.00
8.	Equipment/Vehicles	Lump Sum	\$20,000.00
TOTAL PRICE			\$20,000.00

Identify added value benefits (pro bono) related to debris monitoring that your firm will provide. Include all pre-disaster services. Item/Description:

We typically would meet with the debris haulers and client virtually/conf call prior to activation to align with resources, impacts, any known FEMA specific guidance that may impact the project prior to activation/deployment and that time would not be billed to the client. Additionally, any follow-up invoicing questions post FEMA performance questions or a post debris operation After Action session could be supported virtually or on site pro bono.

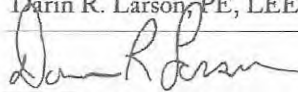
Atkins North America, Inc.

Proposer (Company Name):

Authorized Representative (print):

Darin R. Larson, PE, LEED AP, Vice President

Authorized Signature:



Date:

March, 30, 2023

We propose additional hours for the positions as below:

1. **Lead Monitor** - minimum of 1 to support any field policy questions/debris hauler discussions for all field staff working a maximum of 14 hours a day for 7 days= **98 hours**
2. **Site Monitor** - minimum of 2 site monitors working a maximum of 14 hours a day for 7 days= **196 hours**
3. **Field Monitor** - minimum of 3 to support the final disposal locations and debris staging/reduction sites at 14 hours a day maximum for 7 days, (3 x 14 x 7 days) = **~300 hours**

Additional positions as below:

4. **Project Manager/Liaison Officer - \$165/hour** - To support the client and any contract/resourcing and safety questions to align with client and project team support. Part of normal debris monitoring operations and FEMA reimbursable after declared disasters. Estimated number of hours at 25 hours for 7 day work week.
5. **Grants Manager/Invoice Analyst - \$90/hour** - To provide FEMA source documents, such as FEMA debris hauling VS monitoring reconciliation report, truck certifications, land fill/debris reduction site permit data, location, etc to provide to client and corresponding FEMA project to support FEMA grant reimbursements. Estimated number of hours at 25 hours for 7 day work week

Attachment A – Pricing Schedule (from Contractor’s proposal)

Attachment B – FHWA Form 1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. 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 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own

organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to

employees, applicants for employment and potential employees.

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

unless authorized by the department or agency entering into this transaction.

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

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

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

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

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

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

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

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

Sebring Airport Authority Agenda Item Summary

Meeting Date: May 18, 2023

Presenter: Mike Willingham

Agenda Item: RFP 23-03 Disaster Recovery: Financial and Grant Management Support – Award and Contract

Background: Staff advertised RFP 23-03 Disaster Recovery: Financial and Grant Management Support on March 3, 2023. Three (3) proposals were received and all proposers fulfilled the RFP requirements. Selection Committee evaluated the proposals and deemed APTIM Environmental & Infrastructure, LLC and Atkins North America, Inc to be the most responsive and responsible proposers. Staff recommends selecting both firms to ensure availability.

Requested Motion: Move to approve and authorize the Chairman or Vice Chairman and Secretary or Assistant Secretary to execute contracts.

Board Action:

Approved	<u> X </u>
Denied	<u> </u>
Tabled	<u> </u>

**DISASTER RECOVERY: FINANCIAL AND GRANT MANAGEMENT SUPPORT
SERVICES CONTRACT**

(SEBRING AIRPORT AUTHORITY REQUEST FOR PROPOSALS NO. RFP 23-03)

THIS IS AN AGREEMENT between the **SEBRING AIRPORT AUTHORITY**, a body politic and corporate of the State of Florida (herein called “SAA” or “Authority”) and Atkins North America, Inc., a Florida X corporation or limited liability company (herein called “Contractor”).

1. PREMISE. The Authority requested proposals from qualified contractors to assist in the comprehensive disaster recovery management services, including FEMA Public Assistance, Federal /State policy advisory services, Financial and Grant Management Support, and Data Management. This Contract is a pre-event agreement, which results in no immediate costs to the Authority. Contractor has the preferred qualifications to perform these services, and SAA would like for Contractor to perform the work and Contractor would like to do so on the terms and conditions set forth herein. The Authority intends to seek reimbursement from federal and/or state agencies for the activities performed under this Contract, including reimbursement through the Public Assistance Program of the Federal Emergency Management Agency (FEMA) and other applicable federal and state programs from agencies such as the Federal Highway Administration (FHWA) and Florida Department of Transportation (FDOT).

2. WORK.

- a. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish all materials, labor, tools, equipment, software, technology, superintendence, security, insurance, transportation, fuel, power, light, telephone, sanitary facilities, and all other accessories, facilities, incidentals, and services necessary to provide the work described in Request for Proposals RFP 23-03 (the “Work” or “Project”).
- b. The Work shall be performed in accordance with: (i) the conditions, activities, and prices stated in this Contract and Request for Proposals RFP 23-03 (including addenda, if any, and all of the “Legal Provisions” and “Other” provisions set forth in Section IV); (ii) all applicable laws, rules, ordinances, and regulations; (iii) Contractor’s bid/proposal (including the pricing schedule, which is attached hereto as Attachment A); and (iv) the Legal Provisions – each of which are made a part hereof by reference and collectively constitute this Contract (herein called the “Contract Documents”).
- c. The Work contemplates Contractor working closely with the Authority to ensure the Authority efficiently receives the maximum reimbursement from potential funding sources, including FEMA, FDOT, and FHWA.
- d. In performance of the Work, Contractor shall (i) develop processes and solutions; (ii) attend meetings as requested by the Authority; (iii) proactively identify and report real or

anticipated issues to the Authority; (iv) provide technical assistance; (v) prepare documentation and reports; (vi) ensure compliance with state and federal requirements (including FEMA); (vii) provide a safe working environment for personnel; (viii) provide the Authority with periodic verbal and written status updates; and (ix) appropriately and adequately document all Work.

- e. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract. In order to maximize financial recovery by the SAA, and for purposes of compliance with applicable laws, rules, and regulations, Contractor shall comply and assist the Authority in complying with eligibility and documentation criteria mandated, set forth, outlined, or required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) (i.e., the Public Assistance program), Florida Department of Emergency Management (FDEM), and all other applicable local, state, and federal agencies or entities.
- f. SAA gives Contractor no guarantee of any Project or any specific amount of Work under this Contract. SAA does not guarantee Contractor will be activated pursuant to this Contract. The Contract is a pre-event agreement that will be activated by SAA through a Notice to Proceed. No compensation will accrue to Contractor unless and until the Contract is activated by the SAA.

3. COMMENCEMENT AND COMPLETION DATES.

- a. This Contract is effective beginning May 1, 2023, continuing for a term of three years thereafter unless sooner terminated as herein provided. This contract is eligible for two (2) additional two-year contract extensions after the initial contract term at the sole discretion of the Authority. Any price increase must be disclosed in writing to the Sebring Airport Authority Finance Director ninety (90) days in advance of any extension. In the event Work is being performed when a term expires, the Contract will automatically extend for a period of time reasonable for Contractor to complete the Work, in the Authority's discretion but for no greater than 12 months, and prices shall remain as bid during such continuation of contract.
- b. Contractor shall provide Authority with a telephone number and email address that may be utilized by the Authority to contact the Contractor. The Authority will issue to Contractor a Notice to Proceed containing a work order and work task assignment with an assigned start date. Contractor shall provide the Authority a written estimated Project budget with a Not-to-Exceed amount and estimated date or dates of completion within forty-eight (48) hours of receipt of the Notice to Proceed. The estimated date(s) of completion may be modified by SAA upon written request of Contractor. Contractor shall be responsible for completing all Work within the timeframe stated.

4. **CONTRACT PRICE AND PAYMENT.** Payment under this Contract is based on actual Work performed and properly documented pursuant to the pricing lists set forth in the Contract Documents. Such pricing includes all costs for labor, materials, equipment, software, technology, machinery, tools, apparatus, and transportation necessary to perform the Work; **emergency service charges or fees are not permitted.** SAA reserves the right to deduct from any invoice an amount for defective or nonconforming Work or for Work not provided but invoiced. SAA's authorization of Contractor's estimated Project budget and Not-to-Exceed amount is required prior to performance of Work. It is the Contractor's sole responsibility to manage Project costs in adherence to the Not-to-Exceed amount. SAA will not be liable for more than the Not-to-Exceed amount.

5. **PAYMENTS TO CONTRACTOR.**

- a. SAA shall establish a schedule for submittal of invoices from Contractor given the uniqueness of each Project. Contractors shall submit invoices regularly and for no more than 30-day periods. Contractor's invoices must be of appropriate quality detail to satisfy audits and FEMA, FDOT, or FHWA requirements. Contractor's invoices shall be accompanied by appropriate supporting documentation. SAA may accept or reject any invoice. If SAA rejects an invoice, it will indicate to Contractor the reason for rejection.

Application for Payment. SAA's Executive Director must approve each payment request. Each payment application shall also:

- i. detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor;
- ii. include a certification by Contractor that the Work performed was in complete accordance with the Contract Documents; and
- iii. include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract.

Withholding of Payments. Payments due to the Contractor may be withheld by SAA on account of unsatisfactory Work, failure of Contractor to make payments properly to subcontractors or for materials or labor, failure to include appropriate documentation with invoices, or the reasonable belief of SAA that the Work to be performed cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or fail in any respect to prosecute the Work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, SAA shall have the option, after three (3) days written notice to Contractor, and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by SAA to Contractor.

6. **DRUG-FREE WORKPLACE.** Contractor acknowledges that SAA is a drug-free work place. Contractor covenants that all employees of Contractor working upon SAA property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
7. **STANDARD OF PERFORMANCE.** Contractor shall perform its services consistent with the professional skill and care ordinarily provided by members of the same profession practicing at the same time in the same or similar locality under the same or similar circumstances. Contractor makes no warranties, express or implied, under this Contract or otherwise, in connection with the Work, and nothing stated in this Contract shall be interpreted to require Contractor to exercise professional skill and care greater than that required in this Section 7.
8. **LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work and the protection of persons and property. Contractor shall also maintain all licenses and permits required for the Work hereunder in an active status, including licenses and permits related to Contractor's vehicles, trailers, and equipment. Contractor shall ensure that all Contractor's employees, agents, representatives, and subcontractors have and maintain all licenses and permits required for performance of Work. Contractor shall perform the Work in compliance with all federal contract provisions required by FEMA or outlined or referred to in 2 CFR § 200.318 through § 200.326. Contractor shall perform work in compliance with all applicable provisions of FHWA Form 1273, which is attached hereto as Attachment B and incorporated herein by reference. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
9. **SUSPENSION OF WORK.** At any time and without cause, SAA may suspend the Work or any portion thereof for a period of no more than thirty (30) days upon written notice to Contractor. SAA's notice shall provide the date upon which the Work shall be resumed, and Contractor shall resume Work on the date so fixed.
10. **TERMINATION OF CONTRACT; CONVENIENCE OR EVENT OF BREACH.** SAA may, by written notice, terminate this Contract in whole or in part at any time, either for SAA's convenience or because of Contractor's default or breach, including but not limited to, failure to perform any material provision or portion of the Contract Documents, failure to pay vendors, suppliers, subcontractors or sub-subcontractors as required, failure to adhere to FEMA requirements, failure to adhere to applicable laws, rules, ordinances, and regulations, or failure to undertake adequate safety measures during the performance of a Project. Upon receipt of such notice of termination, Work shall be immediately discontinued (unless the notice directs otherwise). SAA will only pay Contractor for Work completed up to the time of termination, less the amount of reasonable damages suffered by SAA by reason of Contractor's failure to abide by the terms of this Contract. Notwithstanding the above, Contractor is not relieved of liability to the SAA for damages sustained by the SAA by virtue of any breach of this Contract by Contractor and SAA may withhold any payments to Contractor for the purpose of setoff until such time as the amount of damages due the SAA from Contractor is determined. The

rights and remedies of SAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

11. LIQUIDATED DAMAGES.

- a. Contractor and SAA acknowledge that in the event Contractor fails to commence Work or timely complete the Work by the dates established therefor, SAA will incur substantial damages, and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that SAA would incur in such a situation. Such liquidated damages shall be the sole and exclusive remedy of SAA for Contractor's failure to timely commence or complete Work, and SAA hereby waives all other remedies available at law or in equity with respect to losses resulting from late commencement and completion. The amount of liquidated damages calculated hereunder does not include any penalty.
- b. If Contractor fails to timely commence the Work as set forth herein, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay. If Contractor fails to achieve timely completion of the Work, which period of completion may be extended upon written agreement of SAA, Contractor shall pay to SAA liquidated damages in the amount of \$500.00 per calendar day for each calendar day of delay.

12. INDEPENDENT CONTRACTOR. The parties expressly recognize that the relationship between SAA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of SAA.

13. INSURANCE. Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and approved by SAA:

- a. **Commercial General Liability.** Commercial general liability insurance shall be carried with limits of \$1,000,000 of combined single limit for Bodily Injury and Property Damage and \$1,000,000 annual aggregate. Coverage shall include Premises and Operations, Broad Form Contractual, Products and Completed Operations, Owners and Contractors Protective Liability (also known as Independent Contractors Liability), and when applicable include Explosion, Collapse and Underground Damage (XCU), and shall include Contingent Liability against claims arising out of subcontractors with the same minimum amount.
- b. **Automobile Liability.** Vehicle liability insurance shall be carried with limits of \$1,000,000 for Bodily Injury and Property Damage for "all autos" including owned, hired and non-owned autos.

- c. **Workers' Compensation.** Coverage to apply for all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease.
- d. **Errors or Omissions.** Contractor shall purchase and maintain professional liability or malpractice or errors or omissions insurance with limits of \$2,000,000 per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of two (2) years, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.
- e. **Evidence of Insurance.** Contractor shall furnish SAA with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Sebring Airport Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. If Contractor is exempt from workers' compensation requirements, it shall submit a DWC-252 Certificate Exemption Form. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. All certificates of insurance must be on file with and approved by SAA before the commencement of any work activities.

14. SUBCONTRACTS. A portion of a Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Contract applicable to the Work performed by such subcontractor, including, but not limited to, insurance requirements except for excess/umbrella coverage, compliance with laws and regulations, and indemnification of SAA. Contractor shall provide SAA with a list of subcontractors Contractor intends to use, and SAA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request and require changes to such subcontractor agreements as is necessary to comply with this Contract. SAA shall not be obligated to pay any subcontractor under any circumstance.

15. NOTICES. Whenever any notice is required or permitted by this contract to be given, such notice shall be hand-delivered or given by certified mail or overnight delivery addressed to:

Contractor:
Kevin McCauley
1514 Broadway, Suite 202
Fort Myers, FL 33901
310.986.7131
Kevin.McCauley@atkinsglobal.com

SAA:
Executive Director
Sebring Airport Authority
128 Authority Lane
Sebring, FL 33870

Notice shall be considered given when deposited with the U.S. Postal Service or commercial carrier, postage prepaid. Each party will be responsible for notifying the other of any change in their address.

16. **ASSIGNMENT.** Contractor shall not assign this contract, in whole or in part, or any monies due or to become due hereunder, without the written consent of SAA.
17. **Intentionally Omitted.**
18. **CORRECTION OF WORK.** Contractor shall promptly correct all Work determined to be defective or failing to conform to the Contract Documents. Contractor shall bear all costs of correcting such defective Work.
19. **DAMAGE TO PROPERTY.** Contractor agrees that all SAA or third-party owned property, including above and underground utilities, that is damaged by Contractor's personnel, agents, subcontractors, or equipment shall be promptly repaired or replaced, at Contractor's expense. SAA may withhold final payment of retainage to Contractor until all claims, damages, injury, or losses from such are resolved. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to a) persons who may be affected by the Work; b) all the Work and materials and equipment; and c) other property, including trees, shrubs, lawns, and pavements.
20. **TAXES.** Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work under this Contract.
21. **PERMITS, FEES AND NOTICES.** Contractor shall secure and pay for all permits and licenses necessary for the proper execution and completion of the Work which are in effect as of the date of execution of this Contract. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If Contractor performs any Work which is contrary to such laws, ordinances, rules and regulations in effect as of the date of execution of this Contract, then Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.
22. **RESPONSIBILITY FOR THOSE PERFORMING THE WORK.** Contractor shall be responsible to SAA for the acts and omissions of all its employees, agents, and all subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.

23. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

24. SAFETY AND HEALTH REGULATIONS. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

25. INDEMNIFICATION AND HOLD HARMLESS.

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the SAA, its officers, Board members, agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of this Contract or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. In any and all claims against the SAA, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way to the agreed upon contract price as shown in this contract or the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This provision shall survive the termination or expiration of this Contract.
- b. The duty to defend under this paragraph (or elsewhere in the Contract) is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this paragraph (or elsewhere in the Contract) will survive the expiration or earlier termination of this Contract.

- 26. DEFAULT COSTS AND EXPENSES.** Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including SAA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.
- 27. BINDING EFFECT.** This Contract shall bind and inure to the benefit of the successors and assigns of each of the parties.
- 28. GOVERNING LAW.** This Contract will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles thereof, and the parties agree to submit to the jurisdiction of the Tenth Judicial Circuit, in and for Highlands County, Florida.
- 29. Intentionally Omitted.**
- 30. CONFLICTS OF INTERESTS; GIFTS.** The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- 31. PUBLIC ENTITY CRIMES.** By signing this contract, Contractor certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list." By signing below, Contractor certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.
- 32. SCRUTINIZED COMPANIES.** By signing below, Contractor certifies that (a) it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, and is not engaged in a boycott of Israel; or (b) if the Contract is valued at one-million

dollars or more Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes, and is not engaged in business operations in Cuba or Syria.

For any contract for goods or services of \$1 million or more, SAA may terminate the contract at its option if Contractor is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. For any contract for goods or services of any amount, SAA may terminate the contract at its option if contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33. PUBLIC RECORDS. The Contractor is required to keep and maintain public records that ordinarily and necessarily would be required by SAA in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that SAA would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. This agreement can be unilaterally cancelled, and no further payments made by SAA, if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received in conjunction with this Contract pursuant to the provisions of Chapter 119, Florida Statutes. The Contractor must ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to SAA all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SAA in a format that is compatible with the information technology systems of the public agency. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT BEVERLY K. GLARNER, THE CUSTODIAN OF PUBLIC RECORDS at 863-314-1301, bev@sebring-airport.com, or 128 AUTHORITY LANE, SEBRING, FLORIDA 33870.**

34. EVERIFY. All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Contractor's employees hired during the term of this Agreement.

35. TIME. Time is of the essence of this Contract.

36. ENTIRE AGREEMENT AND MODIFICATIONS. The parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Contract is fully integrated, supersedes all prior agreements and understandings, and contains the entire agreement between the parties. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Contract unless reduced to writing and signed by the parties.

37. MULTIPLE ORIGINALS. This Contract is executed in multiple copies, each of which shall be deemed an original.

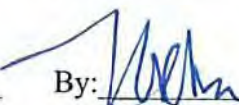
[Signatures on the following page]


AGREED TO this 18th day of May, 2023.

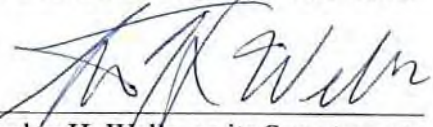
Two Witnesses as to SAA:

SEBRING AIRPORT AUTHORITY, a body politic and corporate of the State of Florida


(Printed Name) Beverly K. Glarner

By: 
 Mark Andrews, as its Chair or
 Peter H. McDevitt, as its Vice Chair

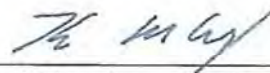

(Printed Name) Colleen Pionsky

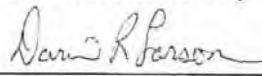
Attest: 
 Stanley H. Wells, as its Secretary or
 D. Craig Johnson, as its Asst. Secretary




Two Witnesses as to Contractor:

Atkins North America, Inc., a Florida corporation or limited liability company

 5/9/2023
(Printed Name) KEVIN MCCAULEY

By:  5/9/2023
Darin Larson, as its Vice President

 5/9/2023
(Printed Name) JAMES GRIFFIN

Attachment A – Pricing Schedule (from Contractor’s proposal)

Tab 8 – Price Proposal Form

RFP #23-01 DISASTER RECOVERY: FINANCIAL AND GRANT MANAGEMENT SERVICES

PRICE PROPOSAL FORM

Provide an hourly price for applicable positions listed below; each utilized position must be accompanied by a job description summary submitted with the proposal. If your company provides other related positions, please add as appropriate. The hourly labor rates shall include all applicable overhead, expenses, and profit.

POSITIONS	HOURLY RATES	ESTIMATE % OF WORK BY THIS POSITION
Project Manager	\$ 220	20 %
FEMA Public Assistance Advisor	\$ 229.5	30 %
Federal reimbursement advisor (non-FEMA)	\$ 212.28	10 %
Grant Manager (FEMA)	\$ 200.81	60 %
Grant Manager (non-FEMA)	\$ 177.86	15 %
IT Solutions	\$ 172.12	1 %
Administrative / Clerical / Data Entry	\$ 86.06	10 %
Environmental Lead	\$ 252.45	2 %
Construction Manager	\$ 177.86	13 %
Principal-in-charge	\$ 0	4 %
	\$	%

Identify added value benefits (pro bono) that your firm will provide:

Pre-deployment meetings to discuss applicable new FEMA policies / pilot programs, other federal fundings, critical / specialized client needs, and post disaster after action reviews / reports. We have FEMA ready invoicing format for reimbursable project cost through management cost specific to PA / mitigation.

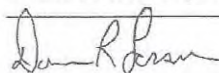
Proposer (Company Name):

Atkins North America, Inc.

Authorized Representative (print):

Darin R. Larson, PE, LEED AP, Vice President

Authorized Signature:



Date:

March 30, 2023

P100053751.YY 23

Attachment B – FHWA Form 1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. 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 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own

organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to

employees, applicants for employment and potential employees.

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

unless authorized by the department or agency entering into this transaction.

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

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

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

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

* * * * *

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

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

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

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

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

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

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

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

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

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

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

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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

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

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

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

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

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

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

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

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

**DISASTER RECOVERY: FINANCIAL AND GRANT MANAGEMENT SUPPORT
SERVICES CONTRACT**

(SEBRING AIRPORT AUTHORITY REQUEST FOR PROPOSALS NO. RFP 23-03)

THIS IS AN AGREEMENT between the **SEBRING AIRPORT AUTHORITY**, a body politic and corporate of the State of Florida (herein called “SAA” or “Authority”) and Aptim Environmental & Infrastructure, LLC, Inc., a Florida corporation or limited liability company (herein called “Contractor”).

1. PREMISE. The Authority requested proposals from qualified contractors to assist in the comprehensive disaster recovery management services, including FEMA Public Assistance, Federal /State policy advisory services, Financial and Grant Management Support, and Data Management. This Contract is a pre-event agreement, which results in no immediate costs to the Authority. Contractor has the preferred qualifications to perform these services, and SAA would like for Contractor to perform the work and Contractor would like to do so on the terms and conditions set forth herein. The Authority intends to seek reimbursement from federal and/or state agencies for the activities performed under this Contract, including reimbursement through the Public Assistance Program of the Federal Emergency Management Agency (FEMA) and other applicable federal and state programs from agencies such as the Federal Highway Administration (FHWA) and Florida Department of Transportation (FDOT).

2. WORK.

- a. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish all materials, labor, tools, equipment, software, technology, superintendence, security, insurance, transportation, fuel, power, light, telephone, sanitary facilities, and all other accessories, facilities, incidentals, and services necessary to provide the work described in Request for Proposals RFP 23-03 (the “Work” or “Project”).
- b. The Work shall be performed in accordance with: (i) the conditions, activities, and prices stated in this Contract and Request for Proposals RFP 23-03 (including addenda, if any, and all of the “Legal Provisions” and “Other” provisions set forth in Section IV); (ii) all applicable laws, rules, ordinances, and regulations; (iii) Contractor’s bid/proposal (including the pricing schedule, which is attached hereto as Attachment A); and (iv) the Legal Provisions – each of which are made a part hereof by reference and collectively constitute this Contract (herein called the “Contract Documents”).
- c. The Work contemplates Contractor working closely with the Authority to ensure the Authority efficiently receives the maximum reimbursement from potential funding sources, including FEMA, FDOT, and FHWA.

- d. In performance of the Work, Contractor shall (i) develop processes and solutions; (ii) attend meetings as requested by the Authority; (iii) proactively identify and report real or anticipated issues to the Authority; (iv) provide technical assistance; (v) prepare documentation and reports; (vi) ensure compliance with state and federal requirements (including FEMA); (vii) provide a safe working environment for personnel; (viii) provide the Authority with periodic verbal and written status updates; and (ix) appropriately and adequately document all Work.
- e. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract. In order to maximize financial recovery by the SAA, and for purposes of compliance with applicable laws, rules, and regulations, Contractor shall comply and assist the Authority in complying with eligibility and documentation criteria mandated, set forth, outlined, or required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) (i.e., the Public Assistance program), Florida Department of Emergency Management (FDEM), and all other applicable local, state, and federal agencies or entities.
- f. SAA gives Contractor no guarantee of any Project or any specific amount of Work under this Contract. SAA does not guarantee Contractor will be activated pursuant to this Contract. The Contract is a pre-event agreement that will be activated by SAA through a Notice to Proceed. No compensation will accrue to Contractor unless and until the Contract is activated by the SAA.

3. COMMENCEMENT AND COMPLETION DATES.

- a. This Contract is effective beginning May 1, 2023, continuing for a term of three years thereafter unless sooner terminated as herein provided. This contract is eligible for two (2) additional two-year contract extensions after the initial contract term at the sole discretion of the Authority. Any price increase must be disclosed in writing to the Sebring Airport Authority Finance Director ninety (90) days in advance of any extension. In the event Work is being performed when a term expires, the Contract will automatically extend for a period of time reasonable for Contractor to complete the Work, in the Authority's discretion but for no greater than 12 months, and prices shall remain as bid during such continuation of contract.
- b. Contractor shall provide Authority with a telephone number and email address that may be utilized by the Authority to contact the Contractor. The Authority will issue to Contractor a Notice to Proceed containing a work order and work task assignment with an assigned start date. Contractor shall provide the Authority a written estimated Project budget with a Not-to-Exceed amount and estimated date or dates of completion within forty-eight (48) hours of receipt of the Notice to Proceed. The estimated date(s) of completion may be modified by SAA upon written request of Contractor. Contractor shall be responsible for completing all Work within the timeframe stated.

4. CONTRACT PRICE AND PAYMENT. Payment under this Contract is based on actual Work performed and properly documented pursuant to the pricing lists set forth in the Contract Documents. Such pricing includes all costs for labor, materials, equipment, software, technology, machinery, tools, apparatus, and transportation necessary to perform the Work; **emergency service charges or fees are not permitted.** SAA reserves the right to deduct from any invoice an amount for defective or nonconforming Work or for Work not provided but invoiced. SAA's authorization of Contractor's estimated Project budget and Not-to-Exceed amount is required prior to performance of Work. It is the Contractor's sole responsibility to manage Project costs in adherence to the Not-to-Exceed amount. SAA will not be liable for more than the Not-to-Exceed amount.

5. PAYMENTS TO CONTRACTOR.

- a. SAA shall establish a schedule for submittal of invoices from Contractor given the uniqueness of each Project. Contractors shall submit invoices regularly and for no more than 30-day periods. Contractor's invoices must be of appropriate quality detail to satisfy audits and FEMA, FDOT, or FHWA requirements. Contractor's invoices shall be accompanied by appropriate supporting documentation. SAA may accept or reject any invoice. If SAA rejects an invoice, it will indicate to Contractor the reason for rejection.

Application for Payment. SAA's Executive Director must approve each payment request. Each payment application shall also:

- i. detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor;
- ii. include a certification by Contractor that the Work performed was in complete accordance with the Contract Documents; and
- iii. include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract.

Withholding of Payments. Payments due to the Contractor may be withheld by SAA on account of unsatisfactory Work, failure of Contractor to make payments properly to subcontractors or for materials or labor, failure to include appropriate documentation with invoices, or the reasonable belief of SAA that the Work to be performed cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or fail in any respect to prosecute the Work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, SAA shall have the option, after three (3) days written notice to Contractor, and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by SAA to Contractor.

6. **DRUG-FREE WORKPLACE.** Contractor acknowledges that SAA is a drug-free work place. Contractor covenants that all employees of Contractor working upon SAA property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
7. **STANDARD OF PERFORMANCE.** Contractor shall perform its services consistent with the professional skill and care ordinarily provided by members of the same profession practicing at the same time in the same or similar locality under the same or similar circumstances. Contractor makes no warranties, express or implied, under this Contract or otherwise, in connection with the Work, and nothing stated in this Contract shall be interpreted to require Contractor to exercise professional skill and care greater than that required in this Section 7.
8. **LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work and the protection of persons and property. Contractor shall also maintain all licenses and permits required for the Work hereunder in an active status, including licenses and permits related to Contractor's vehicles, trailers, and equipment. Contractor shall ensure that all Contractor's employees, agents, representatives, and subcontractors have and maintain all licenses and permits required for performance of Work. Contractor shall perform the Work in compliance with all federal contract provisions required by FEMA or outlined or referred to in 2 CFR § 200.318 through § 200.326. Contractor shall perform work in compliance with all applicable provisions of FHWA Form 1273, which is attached hereto as Attachment B and incorporated herein by reference. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
9. **SUSPENSION OF WORK.** At any time and without cause, SAA may suspend the Work or any portion thereof for a period of no more than thirty (30) days upon written notice to Contractor. SAA's notice shall provide the date upon which the Work shall be resumed, and Contractor shall resume Work on the date so fixed.
10. **TERMINATION OF CONTRACT; CONVENIENCE OR EVENT OF BREACH.** SAA may, by written notice, terminate this Contract in whole or in part at any time, either for SAA's convenience or because of Contractor's default or breach, including but not limited to, failure to perform any material provision or portion of the Contract Documents, failure to pay vendors, suppliers, subcontractors or sub-subcontractors as required, failure to adhere to FEMA requirements, failure to adhere to applicable laws, rules, ordinances, and regulations, or failure to undertake adequate safety measures during the performance of a Project. Upon receipt of such notice of termination, Work shall be immediately discontinued (unless the notice directs otherwise). SAA will only pay Contractor for Work completed up to the time of termination, less the amount of reasonable damages suffered by SAA by reason of Contractor's failure to abide by the terms of this Contract. Notwithstanding the above, Contractor is not relieved of liability to the SAA for damages sustained by the SAA by virtue of any breach of this Contract by Contractor and SAA may withhold any payments to Contractor for the purpose of setoff

until such time as the amount of damages due the SAA from Contractor is determined. The rights and remedies of SAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

11. LIQUIDATED DAMAGES.

- a. Contractor and SAA acknowledge that in the event Contractor fails to commence Work or timely complete the Work by the dates established therefor, SAA will incur substantial damages, and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that SAA would incur in such a situation. Such liquidated damages shall be the sole and exclusive remedy of SAA for Contractor's failure to timely commence or complete Work, and SAA hereby waives all other remedies available at law or in equity with respect to losses resulting from late commencement and completion. The amount of liquidated damages calculated hereunder does not include any penalty.
- b. If Contractor fails to timely commence the Work as set forth herein, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay. If Contractor fails to achieve timely completion of the Work, which period of completion may be extended upon written agreement of SAA, Contractor shall pay to SAA liquidated damages in the amount of \$500.00 per calendar day for each calendar day of delay.

12. INDEPENDENT CONTRACTOR. The parties expressly recognize that the relationship between SAA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of SAA.

13. INSURANCE. Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and approved by SAA:

- a. **Commercial General Liability.** Commercial general liability insurance shall be carried with limits of \$1,000,000 of combined single limit for Bodily Injury and Property Damage and \$1,000,000 annual aggregate. Coverage shall include Premises and Operations, Broad Form Contractual, Products and Completed Operations, Owners and Contractors Protective Liability (also known as Independent Contractors Liability), and when applicable include Explosion, Collapse and Underground Damage (XCU), and shall include Contingent Liability against claims arising out of subcontractors with the same minimum amount.

- b. **Automobile Liability.** Vehicle liability insurance shall be carried with limits of \$1,000,000 for Bodily Injury and Property Damage for "all autos" including owned, hired and non-owned autos.
- c. **Workers' Compensation.** Coverage to apply for all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease.
- d. **Errors or Omissions.** Contractor shall purchase and maintain professional liability or malpractice or errors or omissions insurance with limits of \$2,000,000 per occurrence. If a claims made form of coverage is provided, the retroactive date of coverage shall be no later than the inception date of claims made coverage, unless the prior policy was extended indefinitely to cover prior acts. Coverage shall be extended beyond the policy year either by a supplemental extended reporting period (ERP) of two (2) years, and with no less coverage and with reinstated aggregate limits, or by requiring that any new policy provide a retroactive date no later than the inception date of claims made coverage.
- e. **Evidence of Insurance.** Contractor shall furnish SAA with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Sebring Airport Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. If Contractor is exempt from workers' compensation requirements, it shall submit a DWC-252 Certificate Exemption Form. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. All certificates of insurance must be on file with and approved by SAA before the commencement of any work activities.

14. SUBCONTRACTS. A portion of a Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Contract applicable to the Work performed by such subcontractor, including, but not limited to, insurance requirements except for excess/umbrella coverage, compliance with laws and regulations, and indemnification of SAA. Contractor shall provide SAA with a list of subcontractors Contractor intends to use, and SAA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request and require changes to such subcontractor agreements as is necessary to comply with this Contract. SAA shall not be obligated to pay any subcontractor under any circumstance.

15. NOTICES. Whenever any notice is required or permitted by this contract to be given, such notice shall be hand-delivered or given by certified mail or overnight delivery addressed to:

Contractor:
Scott Canaday
1200 Brickyard Lane, Suite 202
Baton Rouge, LA 70802
863-273-6052
Scott.canaday@aptim.com

SAA:
Executive Director
Sebring Airport Authority
128 Authority Lane
Sebring, FL 33870

Notice shall be considered given when deposited with the U.S. Postal Service or commercial carrier, postage prepaid. Each party will be responsible for notifying the other of any change in their address.

16. ASSIGNMENT. Contractor shall not assign this contract, in whole or in part, or any monies due or to become due hereunder, without the written consent of SAA.

17. Intentionally Omitted.

18. CORRECTION OF WORK. Contractor shall promptly correct all Work determined to be defective or failing to conform to the Contract Documents. Contractor shall bear all costs of correcting such defective Work.

19. DAMAGE TO PROPERTY. Contractor agrees that all SAA or third-party owned property, including above and underground utilities, that is damaged by Contractor's personnel, agents, subcontractors, or equipment shall be promptly repaired or replaced, at Contractor's expense. SAA may withhold final payment of retainage to Contractor until all claims, damages, injury, or losses from such are resolved. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to a) persons who may be affected by the Work; b) all the Work and materials and equipment; and c) other property, including trees, shrubs, lawns, and pavements.

20. TAXES. Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work under this Contract.

21. PERMITS, FEES AND NOTICES. Contractor shall secure and pay for all permits and licenses necessary for the proper execution and completion of the Work which are in effect as of the date of execution of this Contract. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If Contractor performs any Work which is contrary to such laws, ordinances, rules and regulations in effect as of the date of execution of this Contract, then Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

22. RESPONSIBILITY FOR THOSE PERFORMING THE WORK. Contractor shall be responsible to SAA for the acts and omissions of all its employees, agents, and all subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.

23. PROVISIONS REQUIRED BY LAW DEEMED INSERTED. Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

24. SAFETY AND HEALTH REGULATIONS. Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

25. INDEMNIFICATION AND HOLD HARMLESS.

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the SAA, its officers, Board members, agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of this Contract or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. In any and all claims against the SAA, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way to the agreed upon contract price as shown in this contract or the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This provision shall survive the termination or expiration of this Contract.
- b. The duty to defend under this paragraph (or elsewhere in the Contract) is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this paragraph (or elsewhere in the Contract) will survive the expiration or earlier termination of this Contract.

- 26. DEFAULT COSTS AND EXPENSES.** Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including SAA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.
- 27. BINDING EFFECT.** This Contract shall bind and inure to the benefit of the successors and assigns of each of the parties.
- 28. GOVERNING LAW.** This Contract will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles thereof, and the parties agree to submit to the jurisdiction of the Tenth Judicial Circuit, in and for Highlands County, Florida.
- 29. Intentionally Omitted.**
- 30. CONFLICTS OF INTERESTS; GIFTS.** The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- 31. PUBLIC ENTITY CRIMES.** By signing this contract, Contractor certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list." By signing below, Contractor certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.
- 32. SCRUTINIZED COMPANIES.** By signing below, Contractor certifies that (a) it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, and is not engaged in a boycott of Israel; or (b) if the Contract is valued at one-million

dollars or more Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes, and is not engaged in business operations in Cuba or Syria.

For any contract for goods or services of \$1 million or more, SAA may terminate the contract at its option if Contractor is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. For any contract for goods or services of any amount, SAA may terminate the contract at its option if contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33. PUBLIC RECORDS. The Contractor is required to keep and maintain public records that ordinarily and necessarily would be required by SAA in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that SAA would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. This agreement can be unilaterally cancelled, and no further payments made by SAA, if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received in conjunction with this Contract pursuant to the provisions of Chapter 119, Florida Statutes. The Contractor must ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to SAA all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SAA in a format that is compatible with the information technology systems of the public agency. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT BEVERLY K. GLARNER, THE CUSTODIAN OF PUBLIC RECORDS at 863-314-1301, bev@sebring-airport.com, or 128 AUTHORITY LANE, SEBRING, FLORIDA 33870.**

34. EVERIFY. All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Contractor's employees hired during the term of this Agreement.

35. TIME. Time is of the essence of this Contract.

36. ENTIRE AGREEMENT AND MODIFICATIONS. The parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Contract is fully integrated, supersedes all prior agreements and understandings, and contains the entire agreement between the parties. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Contract unless reduced to writing and signed by the parties.

37. MULTIPLE ORIGINALS. This Contract is executed in multiple copies, each of which shall be deemed an original.


[Signatures on the following page]


AGREED TO this 18th day of May, 2023.


Two Witnesses as to SAA:

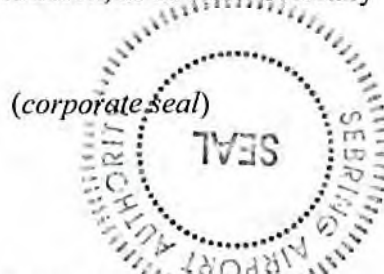
SEBRING AIRPORT AUTHORITY, a body politic and corporate of the State of Florida


(Printed Name) Beverly K. Glarner

By: 
 Mark Andrews, as its Chair or
 Peter H. McDevitt, as its Vice Chair


(Printed Name) Colleen Plonsky

Attest: 
 Stanley H. Wells, as its Secretary or
 D. Craig Johnson, as its Asst. Secretary



Two Witnesses as to Contractor:

Aptim Environmental & Infrastructure, LLC, a Florida corporation or limited liability company

Steve Kral
By: _____
President,

(Printed Name) Steve Kral

(Printed Name) _____

(corporate seal)

Attachment A – Pricing Schedule (from Contractor’s proposal)

RFP #23-01 DISASTER RECOVERY: FINANCIAL AND GRANT MANAGEMENT SERVICES

PRICE PROPOSAL FORM

Provide an hourly price for applicable positions listed below; each utilized position must be accompanied by a job description summary submitted with the proposal. If your company provides other related positions, please add as appropriate. The hourly labor rates shall include all applicable overhead, expenses, and profit.

POSITIONS	HOURLY RATES	ESTIMATE % OF WORK BY THIS POSITION
Project Manager	\$ 155	50 %
FEMA Public Assistance Advisor	\$ 210	20 %
Federal reimbursement advisor (non-FEMA)	\$ 175	10 %
Grant Manager (FEMA)	\$ 175	50 %
Grant Manager (non-FEMA)	\$ 145	40 %
IT Solutions	\$ 175	15 %
Administrative / Clerical / Data Entry	\$ 60	75 %
	\$	%
	\$	%
	\$	%
	\$	%

Identify added value benefits (pro bono) that your firm will provide:

If requested, APTIM will provide the Sebring Airport Authority staff with FEMA PA training. In addition, APTIM will provide

Authority staff direct access to APTIM's InGenius Build application platform. InGenius has various modules and critical functionality (tracking funding sources, managing contract lifecycles, invoicing applications, and creating funding request packages) that will be used

by the project team to centralize and standardize operations rendering transparency of data/information necessary for execution and management as well as performance monitoring for all participants. These videos can be accessed using the link below.

Proposer (Company Name): Aptim Environmental & Infrastructure, LLC

Authorized Representative (print): Steve Kral

Authorized Signature: 

Date: 3/28/23

Link: <https://www.loom.com/share/a70df45b7e8845978b932dd8cb70edda>

Attachment B – FHWA Form 1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. 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 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

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

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

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

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own

organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to

employees, applicants for employment and potential employees.

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

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

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

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

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contract). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction,

unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (www.epls.gov), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (www.epls.gov), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Sebring Airport Authority

Agenda Item Summary

Meeting Date: May 18, 2023

Presenter: Mike Willingham

Agenda Item: RFP 23-04 Disaster Recovery: Temporary Emergency Repair and Stabilization Services

Background: Staff advertised RFP 23-04 Disaster Recovery: Temporary Emergency Repair and Stabilization Services on March 3, 2023. Three (3) proposals were received and all proposers fulfilled the RFP requirements. Selection Committee evaluated the proposals and deemed Royal Plus, Inc. and Hydra Dry, Inc to be the most responsive and responsible proposers. Staff recommends selecting both firms to ensure availability.

Requested Motion: Move to approve and authorize the Chairman or Vice Chairman and Secretary or Assistant Secretary to execute contracts.

Board Action:

Approved X
Denied
Tabled

**DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR AND
STABILIZATION SERVICES CONTRACT**

(SEBRING AIRPORT AUTHORITY REQUEST FOR PROPOSALS NO. RFP 23-04)

THIS IS AN AGREEMENT between the **SEBRING AIRPORT AUTHORITY**, a body politic and corporate of the State of Florida (herein called "SAA" or "Authority") and Royal Plus Inc., a Florida corporation or limited liability company (herein called "Contractor").

1. **PREMISE.** The Authority requested proposals from qualified to assist in Disaster Recovery: Temporary Emergency Repair and Stabilization Services following a disaster while ensuring compliance with applicable Federal (including FEMA, FAA, and FHWA), State, and local government requirements to effectuate maximum financial recovery for the Authority. This Contract is a pre-event agreement, which results in no immediate costs to the Authority. Contractor has the preferred qualifications to perform these services, and SAA would like for Contractor to perform the work and Contractor would like to do so on the terms and conditions set forth herein. In the event of an applicable emergency, the Authority intends to seek reimbursement from federal and/or state agencies for the activities performed under this Contract, including reimbursement through the Public Assistance Program of the Federal Emergency Management Agency (FEMA) and other applicable federal and state programs from agencies such as the Federal Highway Administration (FHWA).

2. **WORK.**
 - a. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish all materials, labor, tools, equipment, superintendence, security, insurance, transportation, fuel, power, light, telephone, sanitary facilities, and all other accessories, facilities, incidentals, and services necessary to provide and appropriately document **temporary emergency repair and stabilization services** to eliminate or lessen an immediate threat to Authority property and to protect public health and safety following a disaster as set forth in Request for Proposal **RFP 23-04** (the "Work" or "Project").

 - b. The scope of this Contract does not include permanent work to restore the property to pre-disaster condition. The scope of this Contract contemplates performance of "emergency work" as defined by 44 CFR 206.201.

 - c. The Work shall be performed in accordance with: (i) the conditions, activities, and prices stated in this Contract and Request for Proposals **RFP 23-04** (including addenda, if any, and all of the "Legal Provisions" and "Other" provisions set forth in Section IV); (ii) all applicable laws, rules, ordinances, and regulations; (iii) Contractor's bid/proposal (including the pricing schedule, which is attached hereto as Attachment A); and (iv) the Legal Provisions – each of which are made a part hereof by reference and collectively constitute this Contract (herein called the "Contract Documents").

- d. The Work/Project may include remediation, demolition, framing and rough carpentry, furniture and equipment removal, hazardous and bio-hazardous waste clean-up, and/or temporary slope stabilization services and other activities as set forth more specifically in the Contract Documents.
- e. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract. In order to maximize financial recovery by the SAA, and for purposes of compliance with applicable laws, rules, and regulations, Contractor shall comply with all emergency temporary work eligibility criteria mandated, set forth, outlined, or required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) (i.e., the Public Assistance program), Florida Department of Emergency Management (FDEM), Florida Department of Transportation (FDOT), and all other applicable local, state, and federal agencies or entities.
- f. SAA gives Contractor no guarantee of any Project or any specific amount of Work under this Contract. SAA does not guarantee Contractor will be activated pursuant to this Contract. The Contract is a pre-event agreement that will be activated by SAA through a Notice to Proceed following an emergency or disaster situation. No compensation will accrue to Contractor unless and until the Contract is activated by the SAA.

3. COMMENCEMENT AND COMPLETION DATES.

- a. This Contract is effective beginning May 1, 2023, continuing for a term of three years thereafter unless sooner terminated as herein provided. This contract is eligible for two (2) additional two-year contract extensions after the initial contract term at the sole discretion of the Authority. Any price increase must be disclosed in writing to the Sebring Airport Authority Finance Director ninety (90) days in advance of any extension. In the event Work is being performed when a term expires, the Contract will automatically extend for a period of time reasonable for Contractor to complete the Work, in the Authority's discretion but for no greater than 12 months, and prices shall remain as bid during such emergency continuation of contract.
- b. Contractor shall provide Authority with an emergency on-call telephone number that may be utilized by the Authority 24-hours a day, 365 days a year to contact the Contractor. The Contractor shall immediately respond to the Authority and shall have personnel on-site and commencing Work no less than twelve (12) hours after notification. Failure to timely mobilize or commence Work may result in a penalty. The Authority will issue to Contractor a Notice to Proceed containing a work order and work task assignment as soon as reasonably practicable. Contractor shall provide the Authority a written estimated Project budget with a Not-to-Exceed amount and estimated date or dates of completion within twenty-four (24) hours of receipt of the Notice to Proceed. The estimated dates of completion may be extended by SAA upon written request of Contractor.

- c. Due to the emergency nature and damage control required for disasters, delays in Contractor's response is not acceptable. Time is of the essence in this Contract. Contractor shall be responsible for completing all Work in an expedited manner.

4. CONTRACT PRICE AND PAYMENT. Payment under this Contract is based on actual Work performed and properly documented pursuant to the pricing lists set forth in the Contract Documents. Such pricing includes all costs for labor, materials, equipment, machinery, tools, apparatus, and transportation necessary to perform the Work; emergency service charges or fees are not permitted. SAA reserves the right to deduct from any invoice an amount for defective or nonconforming Work or for Work not provided but invoiced. Payment will be made only for activities related to temporary, emergency work as defined by FEMA. SAA's authorization of Contractor's estimated Project budget and Not-to-Exceed amount is required prior to performance of Work. It is the Contractor's sole responsibility to manage Project costs in adherence to the Not-to-Exceed amount. SAA will not be liable for more than the Not-to-Exceed amount. To the extent SAA pays Contractor for any Work later found not to be reimbursable for failure to comply with FEMA requirements, Contractor shall reimburse SAA for such amounts.

5. PAYMENTS TO CONTRACTOR.

- a. SAA shall establish a schedule for submittal of invoices from Contractor given the uniqueness of each Project. Contractors shall submit invoices regularly and for no more than 30-day periods. Contractor's invoices must be of appropriate quality detail to satisfy FEMA, FHWA, or FDOT requirements and audits. Contractor's invoices shall be accompanied by appropriate supporting documentation. SAA may accept or reject any invoice. If SAA rejects an invoice, it will indicate to Contractor the reason for rejection.
- b. SAA will retain 10% of the payment from each invoice until such time as the Project is completed to the SAA's satisfaction and all subcontractors and material suppliers, if any, verify that they have been paid.

Application for Payment. On or about the first day of each month, Contractor shall make application for payment based upon percentages of completion in the amount of ninety percent (90%) of the Work completed up to the last day of the previous month, less the aggregate of previous payments. The remaining ten percent (10%) of the Work completed shall be retainage held by SAA until final completion of the Project. Once the Project has reached fifty percent (50%) completion, the retainage on future payments shall be five percent (5%). SAA's Executive Director must approve each payment request. Each payment application shall also:

- i. detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor;

- ii. include a certification by Contractor that the Work performed was in complete accordance with the Contract Documents;
- iii. include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract; and
- iv. include executed partial and/or final payment bond waivers from all suppliers and subcontractors.

Withholding of Payments. Payments due to the Contractor may be withheld by SAA on account of defective Work not remedied, claims filed, failure of Contractor to make payments properly to subcontractor or for material or labor, failure to include appropriate documentation with invoices, or the reasonable belief of SAA that the Work to be performed under this Contract which remains unfinished cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or sufficient properly skilled workmen or materials of the proper quality or quantity necessary for the performance of the Work hereunder or fail in any respect to prosecute the Work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, SAA shall have the option, after three (3) days written notice to Contractor, and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by SAA to Contractor.

- c. Upon approval of the final invoice, Contractor shall invoice SAA for retainage.
6. **DRUG-FREE WORKPLACE.** Contractor acknowledges that SAA is a drug-free work place. Contractor covenants that all employees of Contractor working upon SAA property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
7. **WORKMANSHIP.** Contractor shall, in a good workman like manner, perform all Work and furnish all supplies and materials necessary and proper to complete the Work under this Contract, within the time specified herein, in accordance with the provisions of this Contract, including any specifications, plans, and drawings provided to Contractor. Contractor shall complete the Work to the satisfaction of SAA. Contractor shall promptly repair, at its sole cost, any damage caused, in whole or in part, by Contractor or its agents or subcontractors during performance of the Work.
8. **LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work and the protection of persons and property. Contractor shall also maintain all licenses and permits required for the Work hereunder in an active status, including licenses and permits related to Contractor's vehicles, trailers, and equipment. Contractor shall ensure that all Contractor's employees, agents, representatives, and subcontractors have and maintain all licenses and permits required for performance of Work. Contractor shall perform the Work in compliance with all federal contract provisions required by FEMA or outlined or referred to in 2 CFR § 200.318 through

§ 200.326. Contractor shall perform work in compliance with all provisions of FHWA Form 1273, which is attached hereto as Attachment B and incorporated herein by reference. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

9. **SUSPENSION OF WORK.** At any time and without cause, SAA may suspend the Work or any portion thereof for a period of no more than thirty (30) days upon written notice to Contractor. SAA's notice shall provide the date upon which the Work shall be resumed, and Contractor shall resume Work on the date so fixed.

10. **TERMINATION OF CONTRACT; CONVENIENCE OR EVENT OF BREACH.** SAA may, by written notice, terminate this Contract in whole or in part at any time, either for SAA's convenience or because of Contractor's default or breach, including but not limited to, failure to perform any material provision or portion of the Contract Documents, failure to pay vendors, suppliers, subcontractors or sub-subcontractors as required, failure to adhere to FEMA requirements, failure to adhere to applicable laws, rules, ordinances, and regulations, or failure to undertake adequate safety measures during the performance of a Project. Upon receipt of such notice of termination, Work shall be immediately discontinued (unless the notice directs otherwise). SAA will only pay Contractor for Work completed up to the time of termination, less the amount of reasonable damages suffered by SAA by reason of Contractor's failure to abide by the terms of this Contract. Notwithstanding the above, Contractor is not relieved of liability to the SAA for damages sustained by the SAA by virtue of any breach of this Contract by Contractor and SAA may withhold any payments to Contractor for the purpose of setoff until such time as the amount of damages due the SAA from Contractor is determined. The rights and remedies of SAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

11. LIQUIDATED DAMAGES.

- a. Contractor and SAA acknowledge that in the event Contractor fails to commence Work or timely complete the Work by the dates established therefor, SAA will incur substantial damages by loss of use or further deterioration of buildings and property and dangers to life, public health, and safety, and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that SAA would incur in such a situation. Such liquidated damages shall be the sole and exclusive remedy of SAA for Contractor's failure to timely commence or complete Work, and SAA hereby waives all other remedies available at law or in equity with respect to losses resulting from late commencement and completion. The amount of liquidated damages calculated hereunder does not include any penalty.
- b. If Contractor fails to timely commence the Work as set forth herein, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay. If Contractor fails to achieve timely completion of the Work, which period of completion may be extended upon written agreement of SAA, Contractor shall pay to

SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay until Work is substantially complete and then \$150 per calendar date for each calendar day until final completion of the Work.

- 12. INDEPENDENT CONTRACTOR.** The parties expressly recognize that the relationship between SAA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of SAA.
- 13. INSURANCE.** Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and approved by SAA:
- a. **Commercial General Liability.** Commercial general liability insurance shall be carried with limits of at least \$1,000,000 of combined single limit for Bodily Injury and Property Damage and \$1,000,000 annual aggregate. Coverage shall include Premises and Operations, Broad Form Contractual, Products and Completed Operations, Owners and Contractors Protective Liability (also known as Independent Contractors Liability), and when applicable include Explosion, Collapse and Underground Damage (XCU), and shall include Contingent Liability against claims arising out of subcontractors with the same minimum amount.
 - b. **Automobile Liability.** Vehicle liability insurance shall be carried with limits of at least \$1,000,000 for Bodily Injury and Property Damage for "all autos" including owned, hired and non-owned autos.
 - c. **Workers' Compensation.** Coverage to apply for all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease.
 - d. **Evidence of Insurance.** Contractor shall furnish SAA with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Sebring Airport Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. If Contractor is exempt from workers' compensation requirements, it shall submit a DWC-252 Certificate Exemption Form. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. All certificates of insurance must be on file with and approved by SAA before the commencement of any work activities.
- 14. SUBCONTRACTS.** A portion of a Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Contract

applicable to the Work performed by such subcontractor, including, but not limited to, insurance requirements except for excess/umbrella coverage, compliance with laws and regulations, and indemnification of SAA. Contractor shall provide SAA with a list of subcontractors Contractor intends to use, and SAA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request and require changes to such subcontractor agreements as SAA deems necessary. SAA shall not be obligated to pay any subcontractor under any circumstance.

15. NOTICES. Whenever any notice is required or permitted by this contract to be given, such notice shall be hand-delivered or given by certified mail or overnight delivery addressed to:

Contractor:
Michael Allred, Director
1150 Belle Ave.
Winter Springs, FL 32708
mallred@royalplus.com
407.784.3863

SAA:
Executive Director
Sebring Airport Authority
128 Authority Lane
Sebring, FL 33870

Notice shall be considered given when deposited with the U.S. Postal Service or commercial carrier, postage prepaid. Each party will be responsible for notifying the other of any change in their address.

16. ASSIGNMENT. Contractor shall not assign this contract, in whole or in part, or any monies due or to become due hereunder, without the written consent of SAA.

17. ACCEPTANCE AND WARRANTY.

- a. Acceptance of the Work and final payment shall not relieve Contractor of the obligation to remedy Work that does not comply with the Contract Documents. As more fully set forth in the Contract Documents, Contractor warrants that the Work shall be free from defects in material and workmanship at the time of final completion. Contractor shall promptly repair all defects at Contractor's expense.
- b. Contractor warrants to SAA that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these standards may be considered defective.
- c. In addition to the Contractor's warranty, Contractor agrees that it will correct all Work which fails to conform to the aforesaid warranty in any respect and is discovered and communicated to Contractor during the progress of the Work or within the warranty period provided for in the Contract. However, if Contractor is unable or unwilling to make such correction then SAA may, at its sole option, make the necessary repairs and charge the cost thereof to Contractor. The terms of this warranty and correction obligation shall inure to the benefit of the SAA and shall be in addition to any other rights, remedies or warranties, whether express or implied, available to the SAA under law or equity.

- d. Contractor further warrants that it will comply with all application and other requirements of each manufacturer, producer or supplier of materials and will ensure that any inspections or other requirements of a manufacturer producer or supplier for a warranty of the materials takes place. Contractor shall cause the manufacturers, producers, or suppliers of materials used in the performance of this Contract to issue product warranties.
- 18. CORRECTION OF WORK.** Contractor shall promptly correct all Work determined to be defective or failing to conform to the Contract Documents. Contractor shall bear all costs of correcting such defective Work.
- 19. DAMAGE TO PROPERTY.** Contractor agrees that all SAA or third-party owned property, including above and underground utilities, that is damaged by Contractor's personnel, agents, subcontractors, or equipment shall be promptly repaired or replaced, at Contractor's expense. SAA may withhold final payment of retainage to Contractor until all claims, damages, injury, or losses from such are resolved. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to a) persons who may be affected by the Work; b) all the Work and materials and equipment; and c) other property, including trees, shrubs, lawns, and pavements.
- 20. TAXES.** Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work under this Contract.
- 21. PERMITS, FEES AND NOTICES.** Contractor shall secure and pay for all permits and licenses necessary for the proper execution and completion of the Work which are in effect as of the date of execution of this Contract. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If Contractor performs any Work which is contrary to such laws, ordinances, rules and regulations in effect as of the date of execution of this Contract, then Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 22. RESPONSIBILITY FOR THOSE PERFORMING THE WORK.** Contractor shall be responsible to SAA for the acts and omissions of all its employees, agents, and all subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.
- 23. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

24. SAFETY AND HEALTH REGULATIONS. Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act and such other rules and regulations as may be applicable to the Work.

- a. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- b. Contractor shall take all necessary precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
 - i. All employees on the Work and all other persons who may be affected thereby;
 - ii. All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or any of its subcontractors or sub-subcontractors; and
 - iii. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.
- c. Any injury to persons or damage to property shall be immediately repaired or remedied by Contractor, subject to the limits of indemnification provided by Contractor herein.
- d. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss.
- e. Contractor and SAA shall mutually agree on appropriate staging areas for the materials and equipment for the Project so as to not unreasonably encumber other real property.

25. INDEMNIFICATION AND HOLD HARMLESS.

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the SAA, its officers, Board members, agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this

paragraph. In any and all claims against the SAA, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall be limited to ten million dollars (\$10,000,000.00) and shall not be limited in any way to the agreed upon contract price as shown in this contract or the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This provision shall survive the termination or expiration of this Contract.

- b. The duty to defend under this paragraph (or elsewhere in the Contract) is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this paragraph (or elsewhere in the Contract) will survive the expiration or earlier termination of this Contract.

26. DEFAULT COSTS AND EXPENSES. Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including SAA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.

27. BINDING EFFECT. This Contract shall bind and inure to the benefit of the successors and assigns of each of the parties.

28. GOVERNING LAW. This Contract will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles thereof, and the parties agree to submit to the jurisdiction of the Tenth Judicial Circuit, in and for Highlands County, Florida.

29. PERFORMANCE AND PAYMENT BONDS. Contractor shall provide performance and payment bonds, each in the full amount of the Not-to-Exceed amount, within forty-eight (48) hours after receipt of the Notice to Proceed. SAA may require the posting of additional performance and payment bonds or riders increasing the existing bond amounts as a result of any increase in the estimated value of the Project.

30. CONFLICTS OF INTERESTS; GIFTS. The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary

actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

31. PUBLIC ENTITY CRIMES. By signing this contract, Contractor certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list." By signing below, Contractor certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.

32. SCRUTINIZED COMPANIES. By signing below, Contractor certifies that (a) it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, and is not engaged in a boycott of Israel; or (b) if the Contract is valued at one-million dollars or more Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes, and is not engaged in business operations in Cuba or Syria.

For any contract for goods or services of \$1 million or more, SAA may terminate the contract at its option if Contractor is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. For any contract for goods or services of any amount, SAA may terminate the contract at its option if contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33. PUBLIC RECORDS. The Contractor is required to keep and maintain public records that ordinarily and necessarily would be required by SAA in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that SAA would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. This agreement can be unilaterally cancelled, and no further payments made by SAA, if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received in conjunction with this Contract pursuant to the provisions of Chapter 119, Florida Statutes. The Contractor must ensure that public records that are exempt or

confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to SAA all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SAA in a format that is compatible with the information technology systems of the public agency. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT BEVERLY K. GLARNER, THE CUSTODIAN OF PUBLIC RECORDS at 863-314-1301, bev@sebring-airport.com or 128 AUTHORITY LANE, SEBRING, FL 33870.**

34. **EVERIFY.** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Contractor's employees hired during the term of this Agreement.
35. **TIME.** Time is of the essence of this Contract.
36. **ENTIRE AGREEMENT AND MODIFICATIONS.** The parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Contract is fully integrated, supersedes all prior agreements and understandings, and contains the entire agreement between the parties. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Contract unless reduced to writing and signed by the parties.
37. **MULTIPLE ORIGINALS.** This Contract is executed in multiple copies, each of which shall be deemed an original.

[Signatures on the following page]

AGREED TO this 9th day of May, 2023.

Two Witnesses as to SAA:

SEBRING AIRPORT AUTHORITY, a body politic and corporate of the State of Florida

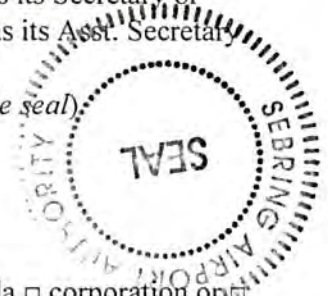
Beverly K. Glarner
(Printed Name) **Beverly K. Glarner**

By: *[Signature]*
 Mark Andrews, as its Chair or
 Peter H. McDevitt, as its Vice Chair

Colleen Plonsky
(Printed Name) **Colleen Plonsky**

Attest: *[Signature]*
 Stanley H. Wells, as its Secretary or
 D. Craig Johnson, as its Asst. Secretary

(corporate seal)



Two Witnesses as to Contractor:

Royal Plus, Inc., a Florida corporation or limited liability company

[Signature]
(Printed Name) **Jeanne Harer**

By: *[Signature]*
Michael Allred, as its Director

Sonja Boles
(Printed Name) **Sonja Boles**

(corporate seal)

Attachment A – Pricing Schedule (from Contractor’s proposal)



Gloves - Leather	PAIR	\$8.00
Gloves - Rubber	PAIR	\$5.00
Hand Sanitizer - Spray Bottle	EACH	\$8.00
Hard Hat	EACH	\$8.00
PFP - Personal Fall Protection (Harness, 5' life line)	EACH	\$47.00
PPE - Personal Protection Equipment (Goggles/Safety Glasses, Leather Gloves, Uniforms, Hard Hat) 2 items Minimum to qualify	EACH	\$33.00
Protective Suites (PolyPro - Tyvek)	EACH	\$14.00
Protective Suits (Saranex Chemical)	EACH	\$35.00
PRP - Personal Respiratory Equipment (no filters)	EACH	\$39.00
Respirator - N95 - Box (10 per box)	BOX	\$42.00
Safety Glasses	EACH	\$6.00
Shoe Covering/Booties	BOX	\$28.00
Tyvek Suits	EACH	\$18.00

6. CONSUMABLES	UOM	FLAT RATE
5 Gallon Buckets	EACH	\$8.00
Adhesive Remover	CAN	\$8.00
All Natural Citrus Solvent Cleaner	GALLON	\$38.00
All Purpose Cleaner	GALLON	\$12.00
All Purpose Spotter	GALLON	\$25.00
Antimicrobial - Microban Or Equivalent	GALLON	\$43.00
Antimicrobial "Green" Botanical Disinfectant - Benefect Or Equivalent RTU	GALLON	\$60.00
Bad Air Sponge	EACH	\$17.00
Bag - Contractor - 3 Mil Trash Bags Heavy Duty 30x60 (50/Roll)	ROLL	\$28.00
Bag - Contractor - Large 6 Mil Trash Bags Heavy Duty 36x60 (50/Roll)	ROLL	\$105.00
Bag - Hepa Vacuum	PACK	\$24.00
Bags, Insulation Machine	EACH	\$35.00
Biocides / Disinfectants	GALLON	\$47.00
Blades - KETT Saw, Tungsten Carbide	EACH	\$56.00
Blades - Reciprocating/Circular Saw	EACH	\$5.00
Blades, Demo (Saw, Grinder Wheels, Etc.)	EACH	\$21.00
Board-up bolts incl. washers and nuts, per set of 4 each	SET	\$11.00
Boots, Chemical Pvc	PER PAIR	\$51.00
Boots/Rubber	PER PAIR	\$21.00
Boots/Disposable	PER PAIR	\$8.00
Brush, Scrub (Long Handle)	EACH	\$13.00
Brushes, Wire (Large)	EACH	\$8.00
Brushes, Wire (Small)	EACH	\$6.00
Cable Ties - 10" - Pack Of 50	PACK	\$19.00
Cable Ties - 14" - Pack Of 50	PACK	\$25.00
Cable Ties - 24" - Pack Of 50	PACK	\$30.00
Cable Ties - 36" - Pack Of 50	PACK	\$36.00
Carpet Cleaning Solution	GALLON	\$24.00
Carpet Deodorizer	GALLON	\$18.00

NATIONWIDE CATASTROPHE RESPONSE



Carpet Protector - 200' Roll/Rubber Or Vinyl	ROLL	\$381.00
Carpet Rinse & Neutralizer	GALLON	\$21.00
Carpet Shield Protection	ROLL	\$91.00
Cartridge, Msa Combination	EACH	\$19.00
Ceiling Poly Clips	EACH	\$8.00
CHEM Safe (5 Gallon Bucket)	EACH	\$320.00
Chemical - Anti-Microbial Encapsulate - Foster 40/50™ Or Like	GALLON	\$58.00
Chemical - Biomist [®] Carbon Dioxide Refill	EACH	\$153.00
Chemical - Biomist [®] Sanitizer	BOTTLE	\$21.00
Chemical - Bleach	GALLON	\$14.00
Chemical - Deodorizer	GALLON	\$21.00
Chemical - Glass Cleaner	GALLON	\$14.00
Chemical - Unsoot Encapsulate	GALLON	\$59.00
6. CONSUMABLES (Continued)	UOM	FLAT RATE
Citrus Cleaner	GALLON	\$14.00
Coc Crystals	GALLON	\$66.00
Concentrated Odor Counteractant & Smoke Eliminator	GALLON	\$182.00
Corrosion Control Oil	GALLON	\$53.00
Corrugated Paper	ROLL	\$138.00
Cotton Cleaning Towels (Per Pound)	POUND	\$16.00
Degreaser / Cleaner	GALLON	\$52.00
Deodorizer (5 Gallons)	EACH	\$75.00
Disinfectant Wipes	CONTAINER	\$14.00
Door Stops	EACH	\$5.00
D-Ring	EACH	\$10.00
Drum Liners	EACH	\$22.00
Duct, Lay Flat (500') with hog, rings	ROLL	\$515.00
Ec 12 Electronics Cleaner	GALLON	\$33.00
Encapsulate, Antifungicidal	GALLON	\$91.00
Extra Duty Cleaner Degreaser	GALLON	\$19.00
Fabric Protector	GALLON	\$44.00
Fasteners, Misc./Lock & Hasp	EACH	\$44.00
Fiberboard Flooring	ROLL	\$96.00
Filter - 8x10x1 Pleated	EACH	\$10.00
Filter - 12x12x1 Pleated	EACH	\$10.00
Filter - 12x20x1 Pleated	EACH	\$13.00
Filter - 20x20x2 Pleated	EACH	\$16.00
Filter - Charcoal, Air Scrubber	EACH	\$36.00
Filter - HEPA (Scrubber / Vacuum)	EACH	\$320.00
Filter - HEPA Charcoal (Scrubber)	EACH	\$129.00
Filter - HEPA Scrubber NAM Primary	EACH	\$15.00
Filter - HEPA Scrubber NAM Secondary	EACH	\$14.00
Filter - Refrigerant DH Primary	EACH	\$17.00
Filter - Refrigerant DH Secondary	EACH	\$20.00
Floor Buffer Pad	EACH	\$14.00
Floor Dry (40#)	BAG	\$18.00

NATIONWIDE CATASTROPHE RESPONSE



Floor Sweep	BOX	\$105.00
Foam Scrubbing Pads	PACK	\$58.00
Fogging Solution	GALLON	\$84.00
Fragile Stickers	ROLL	43.00
Furniture Blocks	BOX	\$96.00
Furniture Pads 4"X4" (1000/Box)	BOX	\$21.00
Furniture Polish	CAN	\$13.00
Furniture Sliders	Set of 4	\$28.00
Furring Strips	EACH	\$0.98
Glass Cleaner	GALLON	\$37.00
6. CONSUMABLES (Continued)	UOM	FLAT RATE
Grinder Wheel - Wire	EACH	\$32.00
Hepa / Small Particulate Collection Bags	EACH	\$21.00
Hip Waders	DAY	\$39.00
Liquid Laundry Detergent	GALLON	\$20.00
Lock Box	EACH	\$ 51.00
Lumber - 1 x 4 x 8	EACH	\$ 8.00
Lumber - 2 x 4 x 8	EACH	\$ 11.00
Lumber - Plywood	EACH	\$ 37.00
Mop And Handle	EACH	\$ 88.00
Mop Heads	EACH	\$8.00
Mop Heads - Rayon	EACH	\$ 10.00
Odor Gel Bucket/Block, 4lb	EACH	\$ 66.00
Odor Neutralizer Block	EACH	\$ 8.00
Oil Preserver	GALLON	\$ 52.00
Packing - Boxes - Book	BOX	\$ 3.00
Packing - Boxes - Dish Pack	BOX	\$ 7.00
Packing - Boxes - File	BOX	\$ 6.00
Packing - Boxes - Large	BOX	\$5.00
Packing - Boxes - Medium	BOX	\$4.00
Packing - Boxes - Mirror	BOX	\$6.00
Packing - Boxes - Small	BOX	\$3.00
Packing - Boxes - Wardrobe	BOX	\$15.00
Packing - Bubble Wrap	ROLL	\$200.00
Packing - Packing Peanuts	BAG	\$55.00
Packing - Paper	PACK	\$13.00
Packing Labels	EACH	\$2.00
Paper Sheeting 36 x 24	BOX	\$156.00
Paper Towels	CASE	\$54.00
Peel & Stick Zipper	EACH	\$19.00
Plastic or Visqueen, 3 mil, 20 x 100	ROLL	\$48.00
Plastic Sheeting, 1.5 Mil (24 x 200)	ROLL	\$49.00
Plastic Sheeting, 4 mil (20 x 100)	ROLL	\$70.00
Plastic Sheeting, 6 mil (20 x 100)	ROLL	\$101.00
Plywood - 4 x 8 x 1/2 sheet	EACH	\$29.00
Rags	BOX	\$54.00

NATIONWIDE CATASTROPHE RESPONSE



Red Resin Paper (200 ft roll)	ROLL	\$28.00
Respirator - Carbon Cartridge	EACH	\$36.00
Respirator - Cartridge	EACH	\$14.00
Respirator - HEPA Cartridge	EACH	\$29.00
Respirator - Organic Vapor Cartridge	EACH	\$58.00
Respirator - PAPR cartridge	EACH	\$29.00
Respirator, HEPA + Particulate Replacement Filter	EACH	\$41.00
6. CONSUMABLES (Continued)	UOM	FLAT RATE
Saws-All Blade, Combo	DOZEN	\$21.00
Saws-All Blade, Metal	DOZEN	\$21.00
Saws-All Blade, Wood	DOZEN	\$20.00
Shrink Wrap	ROLL	\$64.00
Soda, Soda Blaster Material	BAG	\$40.00
SOS Scrubber Sponge (8 Each/Pack)	PACK	\$18.00
Sponge (For Sponge Jet)	BAG	\$52.00
Sponge, Particulate Removal (1.5" X3"X6")	EACH	\$6.00
Sponge, Particulate Removal (3/4" X3"X6")	EACH	\$4.00
Spray Foam	CAN	\$13.00
Spray On Adhesive	CAN	\$7.00
Stainless Steel Polish	CAN	\$13.00
Steamat-A-Fog	GALLON	\$48.00
Steel Wool	EACH	\$9.00
Stretch Wrap, Clear, Up To 18" Wide	ROLL	\$46.00
Tape - Caution	ROLL	\$37.00
Tape - Double-Sided	ROLL	\$14.00
Tape - Duct	ROLL	\$14.00
Tape - Packing	ROLL	\$9.00
Tape - Painters	ROLL	\$11.00
Tape, Clean Room	ROLL	\$28.00
Tape, Dr. Shrink™ Preservation, Up To 6"	ROLL	\$37.00
Taping - Blue Remediation	ROLL	\$10.00
Tapping Tees / Reversers (setup to 5)	DAY	\$25.00
Tarps	SQFT	\$0.65
Thinner, Paint/Mineral Spirits	GALLON	\$26.00
Through Bolts	EACH	\$8.00
Towels, Disposable Heavy Duty	CASE	\$40.00
Twine	BOX	\$50.00
Walk Off Mats Per Pack Of 30 Sheets	PACK	\$62.00
Wood Restoration Cleaner (32oz)	EACH	\$33.00

NATIONWIDE CATASTROPHE RESPONSE

Attachment B – FHWA Form 1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. 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 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own

organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 U.S.C. Section 140, the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 U.S.C. Section 140, the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to

employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the

investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full

efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of

Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and

participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction,

unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website ([http://www.epls.gov](#)), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (www.gsa.gov), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

**DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR AND
STABILIZATION SERVICES CONTRACT**

(SEBRING AIRPORT AUTHORITY REQUEST FOR PROPOSALS NO. RFP 23-04)

THIS IS AN AGREEMENT between the **SEBRING AIRPORT AUTHORITY**, a body politic and corporate of the State of Florida (herein called "SAA" or "Authority") and Hydradry, Inc., a Florida corporation or limited liability company (herein called "Contractor").

1. **PREMISE.** The Authority requested proposals from qualified to assist in Disaster Recovery: Temporary Emergency Repair and Stabilization Services following a disaster while ensuring compliance with applicable Federal (including FEMA, FAA, and FHWA), State, and local government requirements to effectuate maximum financial recovery for the Authority. This Contract is a pre-event agreement, which results in no immediate costs to the Authority. Contractor has the preferred qualifications to perform these services, and SAA would like for Contractor to perform the work and Contractor would like to do so on the terms and conditions set forth herein. In the event of an applicable emergency, the Authority intends to seek reimbursement from federal and/or state agencies for the activities performed under this Contract, including reimbursement through the Public Assistance Program of the Federal Emergency Management Agency (FEMA) and other applicable federal and state programs from agencies such as the Federal Highway Administration (FHWA).

2. **WORK.**

- a. Contractor, in consideration of the premises and mutual covenants herein contained, agrees to furnish all materials, labor, tools, equipment, superintendence, security, insurance, transportation, fuel, power, light, telephone, sanitary facilities, and all other accessories, facilities, incidentals, and services necessary to provide and appropriately document **temporary emergency repair and stabilization services** to eliminate or lessen an immediate threat to Authority property and to protect public health and safety following a disaster as set forth in Request for Proposal **RFP 23-04** (the "Work" or "Project").
- b. The scope of this Contract does not include permanent work to restore the property to pre-disaster condition. The scope of this Contract contemplates performance of "emergency work" as defined by 44 CFR 206.201.
- c. The Work shall be performed in accordance with: (i) the conditions, activities, and prices stated in this Contract and Request for Proposals **RFP 23-04** (including addenda, if any, and all of the "Legal Provisions" and "Other" provisions set forth in Section IV); (ii) all applicable laws, rules, ordinances, and regulations; (iii) Contractor's bid/proposal (including the pricing schedule, which is attached hereto as Attachment A); and (iv) the Legal Provisions – each of which are made a part hereof by reference and collectively constitute this Contract (herein called the "Contract Documents").

- d. The Work/Project may include remediation, demolition, framing and rough carpentry, furniture and equipment removal, hazardous and bio-hazardous waste clean-up, and/or temporary slope stabilization services and other activities as set forth more specifically in the Contract Documents.
- e. Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of this Contract. In order to maximize financial recovery by the SAA, and for purposes of compliance with applicable laws, rules, and regulations, Contractor shall comply with all emergency temporary work eligibility criteria mandated, set forth, outlined, or required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) (i.e., the Public Assistance program), Florida Department of Emergency Management (FDEM), Florida Department of Transportation (FDOT), and all other applicable local, state, and federal agencies or entities.
- f. SAA gives Contractor no guarantee of any Project or any specific amount of Work under this Contract. SAA does not guarantee Contractor will be activated pursuant to this Contract. The Contract is a pre-event agreement that will be activated by SAA through a Notice to Proceed following an emergency or disaster situation. No compensation will accrue to Contractor unless and until the Contract is activated by the SAA.

3. COMMENCEMENT AND COMPLETION DATES.

- a. This Contract is effective beginning May 1, 2023, continuing for a term of three years thereafter unless sooner terminated as herein provided. This contract is eligible for two (2) additional two-year contract extensions after the initial contract term at the sole discretion of the Authority. Any price increase must be disclosed in writing to the Sebring Airport Authority Finance Director ninety (90) days in advance of any extension. In the event Work is being performed when a term expires, the Contract will automatically extend for a period of time reasonable for Contractor to complete the Work, in the Authority's discretion but for no greater than 12 months, and prices shall remain as bid during such emergency continuation of contract.
- b. Contractor shall provide Authority with an emergency on-call telephone number that may be utilized by the Authority 24-hours a day, 365 days a year to contact the Contractor. The Contractor shall immediately respond to the Authority and shall have personnel on-site and commencing Work no less than twelve (12) hours after notification. Failure to timely mobilize or commence Work may result in a penalty. The Authority will issue to Contractor a Notice to Proceed containing a work order and work task assignment as soon as reasonably practicable. Contractor shall provide the Authority a written estimated Project budget with a Not-to-Exceed amount and estimated date or dates of completion within twenty-four (24) hours of receipt of the Notice to Proceed. The estimated dates of completion may be extended by SAA upon written request of Contractor.

- c. Due to the emergency nature and damage control required for disasters, delays in Contractor's response is not acceptable. Time is of the essence in this Contract. Contractor shall be responsible for completing all Work in an expedited manner.

4. **CONTRACT PRICE AND PAYMENT.** Payment under this Contract is based on actual Work performed and properly documented pursuant to the pricing lists set forth in the Contract Documents. Such pricing includes all costs for labor, materials, equipment, machinery, tools, apparatus, and transportation necessary to perform the Work; emergency service charges or fees are not permitted. SAA reserves the right to deduct from any invoice an amount for defective or nonconforming Work or for Work not provided but invoiced. Payment will be made only for activities related to temporary, emergency work as defined by FEMA. SAA's authorization of Contractor's estimated Project budget and Not-to-Exceed amount is required prior to performance of Work. It is the Contractor's sole responsibility to manage Project costs in adherence to the Not-to-Exceed amount. SAA will not be liable for more than the Not-to-Exceed amount. To the extent SAA pays Contractor for any Work later found not to be reimbursable for failure to comply with FEMA requirements, Contractor shall reimburse SAA for such amounts.

5. **PAYMENTS TO CONTRACTOR.**

- a. SAA shall establish a schedule for submittal of invoices from Contractor given the uniqueness of each Project. Contractors shall submit invoices regularly and for no more than 30-day periods. Contractor's invoices must be of appropriate quality detail to satisfy FEMA, FHWA, or FDOT requirements and audits. Contractor's invoices shall be accompanied by appropriate supporting documentation. SAA may accept or reject any invoice. If SAA rejects an invoice, it will indicate to Contractor the reason for rejection.
- b. SAA will retain 10% of the payment from each invoice until such time as the Project is completed to the SAA's satisfaction and all subcontractors and material suppliers, if any, verify that they have been paid.

Application for Payment. On or about the first day of each month, Contractor shall make application for payment based upon percentages of completion in the amount of ninety percent (90%) of the Work completed up to the last day of the previous month, less the aggregate of previous payments. The remaining ten percent (10%) of the Work completed shall be retainage held by SAA until final completion of the Project. Once the Project has reached fifty percent (50%) completion, the retainage on future payments shall be five percent (5%). SAA's Executive Director must approve each payment request. Each payment application shall also:

- i. detail an estimate of the percentage of work performed by any subcontractor in relation to the entire scope of work contained in the subcontractor's contract with Contractor;

- ii. include a certification by Contractor that the Work performed was in complete accordance with the Contract Documents;
- iii. include a certification that the amount of the invoice is accurate in relation to the work performed under any subcontractor contract; and
- iv. include executed partial and/or final payment bond waivers from all suppliers and subcontractors.

Withholding of Payments. Payments due to the Contractor may be withheld by SAA on account of defective Work not remedied, claims filed, failure of Contractor to make payments properly to subcontractor or for material or labor, failure to include appropriate documentation with invoices, or the reasonable belief of SAA that the Work to be performed under this Contract which remains unfinished cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or sufficient properly skilled workmen or materials of the proper quality or quantity necessary for the performance of the Work hereunder or fail in any respect to prosecute the Work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, SAA shall have the option, after three (3) days written notice to Contractor, and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by SAA to Contractor.

- c. Upon approval of the final invoice, Contractor shall invoice SAA for retainage.
6. **DRUG-FREE WORKPLACE.** Contractor acknowledges that SAA is a drug-free work place. Contractor covenants that all employees of Contractor working upon SAA property shall be subject to implementation of all possible provisions to maintain a drug-free environment and that Contractor will adhere to the provisions of Florida Statute 287.087.
7. **WORKMANSHIP.** Contractor shall, in a good workman like manner, perform all Work and furnish all supplies and materials necessary and proper to complete the Work under this Contract, within the time specified herein, in accordance with the provisions of this Contract, including any specifications, plans, and drawings provided to Contractor. Contractor shall complete the Work to the satisfaction of SAA. Contractor shall promptly repair, at its sole cost, any damage caused, in whole or in part, by Contractor or its agents or subcontractors during performance of the Work.
8. **LAWS AND REGULATIONS.** Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to performance of the Work and the protection of persons and property. Contractor shall also maintain all licenses and permits required for the Work hereunder in an active status, including licenses and permits related to Contractor's vehicles, trailers, and equipment. Contractor shall ensure that all Contractor's employees, agents, representatives, and subcontractors have and maintain all licenses and permits required for performance of Work. Contractor shall perform the Work in compliance with all federal contract provisions required by FEMA or outlined or referred to in 2 CFR § 200.318 through

§ 200.326. Contractor shall perform work in compliance with all provisions of FHWA Form 1273, which is attached hereto as Attachment B and incorporated herein by reference. Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

9. **SUSPENSION OF WORK.** At any time and without cause, SAA may suspend the Work or any portion thereof for a period of no more than thirty (30) days upon written notice to Contractor. SAA's notice shall provide the date upon which the Work shall be resumed, and Contractor shall resume Work on the date so fixed.

10. **TERMINATION OF CONTRACT; CONVENIENCE OR EVENT OF BREACH.** SAA may, by written notice, terminate this Contract in whole or in part at any time, either for SAA's convenience or because of Contractor's default or breach, including but not limited to, failure to perform any material provision or portion of the Contract Documents, failure to pay vendors, suppliers, subcontractors or sub-subcontractors as required, failure to adhere to FEMA requirements, failure to adhere to applicable laws, rules, ordinances, and regulations, or failure to undertake adequate safety measures during the performance of a Project. Upon receipt of such notice of termination, Work shall be immediately discontinued (unless the notice directs otherwise). SAA will only pay Contractor for Work completed up to the time of termination, less the amount of reasonable damages suffered by SAA by reason of Contractor's failure to abide by the terms of this Contract. Notwithstanding the above, Contractor is not relieved of liability to the SAA for damages sustained by the SAA by virtue of any breach of this Contract by Contractor and SAA may withhold any payments to Contractor for the purpose of setoff until such time as the amount of damages due the SAA from Contractor is determined. The rights and remedies of SAA provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

11. LIQUIDATED DAMAGES.

- a. Contractor and SAA acknowledge that in the event Contractor fails to commence Work or timely complete the Work by the dates established therefor, SAA will incur substantial damages by loss of use or further deterioration of buildings and property and dangers to life, public health, and safety, and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that SAA would incur in such a situation. Such liquidated damages shall be the sole and exclusive remedy of SAA for Contractor's failure to timely commence or complete Work, and SAA hereby waives all other remedies available at law or in equity with respect to losses resulting from late commencement and completion. The amount of liquidated damages calculated hereunder does not include any penalty.
- b. If Contractor fails to timely commence the Work as set forth herein, Contractor shall pay to SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay. If Contractor fails to achieve timely completion of the Work, which period of completion may be extended upon written agreement of SAA, Contractor shall pay to

SAA liquidated damages in the amount of \$1,000.00 per calendar day for each calendar day of delay until Work is substantially complete and then \$150 per calendar date for each calendar day until final completion of the Work.

- 12. INDEPENDENT CONTRACTOR.** The parties expressly recognize that the relationship between SAA and the Contractor is that of independent contractors, and that neither Contractor, nor any of its servants, agents, or employees shall ever be considered to be an agent, servant or employee of SAA.
- 13. INSURANCE.** Contractor shall obtain and maintain, at Contractor's expense, the following insurance and shall not commence Work hereunder until such insurance is obtained and approved by SAA:
- a. **Commercial General Liability.** Commercial general liability insurance shall be carried with limits of at least \$1,000,000 of combined single limit for Bodily Injury and Property Damage and \$1,000,000 annual aggregate. Coverage shall include Premises and Operations, Broad Form Contractual, Products and Completed Operations, Owners and Contractors Protective Liability (also known as Independent Contractors Liability), and when applicable include Explosion, Collapse and Underground Damage (XCU), and shall include Contingent Liability against claims arising out of subcontractors with the same minimum amount.
 - b. **Automobile Liability.** Vehicle liability insurance shall be carried with limits of at least \$1,000,000 for Bodily Injury and Property Damage for "all autos" including owned, hired and non-owned autos.
 - c. **Workers' Compensation.** Coverage to apply for all employees for statutory limits in compliance with the applicable State and Federal laws. The policy must include Employers' Liability with a limit of \$1,000,000 each accident, \$1,000,000 each employee, \$1,000,000 policy limit for disease.
 - d. **Evidence of Insurance.** Contractor shall furnish SAA with Certificates of Insurance. The Certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Sebring Airport Authority is to be specifically included as an additional insured on all policies except Workers' Compensation. If Contractor is exempt from workers' compensation requirements, it shall submit a DWC-252 Certificate Exemption Form. In the event the insurance coverage expires prior to the completion of the project, a renewal certificate shall be issued 30-days prior to said expiration date. All certificates of insurance must be on file with and approved by SAA before the commencement of any work activities.
- 14. SUBCONTRACTS.** A portion of a Project may be performed under subcontracts, and Contractor shall require that each subcontractor agree to the provisions of this Contract

applicable to the Work performed by such subcontractor, including, but not limited to, insurance requirements except for excess/umbrella coverage, compliance with laws and regulations, and indemnification of SAA. Contractor shall provide SAA with a list of subcontractors Contractor intends to use, and SAA retains the right to refuse a subcontractor for reasonable cause, to review Contractor's agreements with subcontractors upon request and require changes to such subcontractor agreements as SAA deems necessary. SAA shall not be obligated to pay any subcontractor under any circumstance.

- 15. NOTICES.** Whenever any notice is required or permitted by this contract to be given, such notice shall be hand-delivered or given by certified mail or overnight delivery addressed to:

Contractor:
Elizabeth Rodriguez
203 West 1st Street
Apopka, FL 32703
Eli@hydradry.com
407.290.0567

SAA:
Executive Director
Sebring Airport Authority
128 Authority Lane
Sebring, FL 33870

Notice shall be considered given when deposited with the U.S. Postal Service or commercial carrier, postage prepaid. Each party will be responsible for notifying the other of any change in their address.

- 16. ASSIGNMENT.** Contractor shall not assign this contract, in whole or in part, or any monies due or to become due hereunder, without the written consent of SAA.

17. ACCEPTANCE AND WARRANTY.

- a. Acceptance of the Work and final payment shall not relieve Contractor of the obligation to remedy Work that does not comply with the Contract Documents. As more fully set forth in the Contract Documents, Contractor warrants that the Work shall be free from defects in material and workmanship at the time of final completion. Contractor shall promptly repair all defects at Contractor's expense.
- b. Contractor warrants to SAA that all Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. All Work not conforming to these standards may be considered defective.
- c. In addition to the Contractor's warranty, Contractor agrees that it will correct all Work which fails to conform to the aforesaid warranty in any respect and is discovered and communicated to Contractor during the progress of the Work or within the warranty period provided for in the Contract. However, if Contractor is unable or unwilling to make such correction then SAA may, at its sole option, make the necessary repairs and charge the cost thereof to Contractor. The terms of this warranty and correction obligation shall inure to the benefit of the SAA and shall be in addition to any other rights, remedies or warranties, whether express or implied, available to the SAA under law or equity.

- d. Contractor further warrants that it will comply with all application and other requirements of each manufacturer, producer or supplier of materials and will ensure that any inspections or other requirements of a manufacturer producer or supplier for a warranty of the materials takes place. Contractor shall cause the manufacturers, producers, or suppliers of materials used in the performance of this Contract to issue product warranties.
- 18. CORRECTION OF WORK.** Contractor shall promptly correct all Work determined to be defective or failing to conform to the Contract Documents. Contractor shall bear all costs of correcting such defective Work.
- 19. DAMAGE TO PROPERTY.** Contractor agrees that all SAA or third-party owned property, including above and underground utilities, that is damaged by Contractor's personnel, agents, subcontractors, or equipment shall be promptly repaired or replaced, at Contractor's expense. SAA may withhold final payment of retainage to Contractor until all claims, damages, injury, or losses from such are resolved. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions for the safety of and shall provide the necessary protection to prevent damage, injury, or loss to a) persons who may be affected by the Work; b) all the Work and materials and equipment; and c) other property, including trees, shrubs, lawns, and pavements.
- 20. TAXES.** Contractor shall pay all sales, consumer, use and other similar taxes required by law resulting from the Work under this Contract.
- 21. PERMITS, FEES AND NOTICES.** Contractor shall secure and pay for all permits and licenses necessary for the proper execution and completion of the Work which are in effect as of the date of execution of this Contract. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If Contractor performs any Work which is contrary to such laws, ordinances, rules and regulations in effect as of the date of execution of this Contract, then Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.
- 22. RESPONSIBILITY FOR THOSE PERFORMING THE WORK.** Contractor shall be responsible to SAA for the acts and omissions of all its employees, agents, and all subcontractors, their agents and employees, and all other persons performing any of the Work by, through, or under Contractor.
- 23. PROVISIONS REQUIRED BY LAW DEEMED INSERTED.** Each and every provision of law and clause required by law to be inserted in this document shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included, and if, through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon application of either party, the Contract shall forthwith be physically amended to make such insertion or correction.

24. SAFETY AND HEALTH REGULATIONS. Contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act and such other rules and regulations as may be applicable to the Work.

- a. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- b. Contractor shall take all necessary precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:
 - i. All employees on the Work and all other persons who may be affected thereby;
 - ii. All the Work, all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of Contractor or any of its subcontractors or sub-subcontractors; and
 - iii. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designed for removal, relocation or replacement in the course of construction.
- c. Any injury to persons or damage to property shall be immediately repaired or remedied by Contractor, subject to the limits of indemnification provided by Contractor herein.
- d. Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss.
- e. Contractor and SAA shall mutually agree on appropriate staging areas for the materials and equipment for the Project so as to not unreasonably encumber other real property.

25. INDEMNIFICATION AND HOLD HARMLESS.

- a. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the SAA, its officers, Board members, agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor, any material or equipment supplier, anyone directly or indirectly employed by any of them. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this

paragraph. In any and all claims against the SAA, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall be limited to ten million dollars (\$10,000,000.00) and shall not be limited in any way to the agreed upon contract price as shown in this contract or the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This provision shall survive the termination or expiration of this Contract.

- b. The duty to defend under this paragraph (or elsewhere in the Contract) is independent and separate from the duty to indemnify, and the duty to defend exists regardless of any ultimate liability of Contractor or any indemnified party. The duty to defend arises immediately upon presentation of a claim by any party and written notice of such claim being provided to Contractor. Contractor's obligation to indemnify and defend under this paragraph (or elsewhere in the Contract) will survive the expiration or earlier termination of this Contract.

26. DEFAULT COSTS AND EXPENSES. Subject to the limitations of Sec. 768.28, Fla. Stat., in any action brought by either party for the interpretation or enforcement of the obligations of the other party including SAA's right to indemnification, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, paralegal fees, court and other costs, whether incurred before or during litigation, on appeal, in bankruptcy or in post judgment collections.

27. BINDING EFFECT. This Contract shall bind and inure to the benefit of the successors and assigns of each of the parties.

28. GOVERNING LAW. This Contract will be governed by and construed in accordance with the laws of the State of Florida, without regard to conflict of law principles thereof, and the parties agree to submit to the jurisdiction of the Tenth Judicial Circuit, in and for Highlands County, Florida.

29. PERFORMANCE AND PAYMENT BONDS. Contractor shall provide performance and payment bonds, each in the full amount of the Not-to-Exceed amount, within forty-eight (48) hours after receipt of the Notice to Proceed. SAA may require the posting of additional performance and payment bonds or riders increasing the existing bond amounts as a result of any increase in the estimated value of the Project.

30. CONFLICTS OF INTERESTS; GIFTS. The parties have followed and agree to continue to follow Chapter 112, Florida Statute, standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts; the standards regarding solicitation and/or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to subcontracts; and for disciplinary

actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

31. PUBLIC ENTITY CRIMES. By signing this contract, Contractor certifies that it has knowledge of and understands Florida Statute 287.133, including section (2)(a) which provides: "A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list." By signing below, Contractor certifies that it has and shall comply with the provisions of Florida Statute 287.133, and further certifies that neither it, nor its officers, directors, executives, partners, shareholders, employees, members, or agents, nor its affiliates, are on the convicted vendor list.

32. SCRUTINIZED COMPANIES. By signing below, Contractor certifies that (a) it is not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725, Florida Statutes, and is not engaged in a boycott of Israel; or (b) if the Contract is valued at one-million dollars or more Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, Florida Statutes, and is not engaged in business operations in Cuba or Syria.

For any contract for goods or services of \$1 million or more, SAA may terminate the contract at its option if Contractor is found to have submitted a false certification pursuant to section 287.135, F.S., been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria. For any contract for goods or services of any amount, SAA may terminate the contract at its option if contractor is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

33. PUBLIC RECORDS. The Contractor is required to keep and maintain public records that ordinarily and necessarily would be required by SAA in order to perform the service sought herein. The Contractor is required to provide the public with access to public records on the same terms and conditions that SAA would provide the records and at a cost that does not exceed the cost provided in Ch. 119.07 et seq., Fla. Stat. or as otherwise provided by law. This agreement can be unilaterally cancelled, and no further payments made by SAA, if the Contractor refuses to allow public access to all documents, papers, letters or other material made or received in conjunction with this Contract pursuant to the provisions of Chapter 119, Florida Statutes. The Contractor must ensure that public records that are exempt or

confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law and must meet all requirements for retaining public records and transfer, at no cost, to SAA all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to SAA in a format that is compatible with the information technology systems of the public agency. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT BEVERLY K. GLARNER, THE CUSTODIAN OF PUBLIC RECORDS at 863-314-1301, bev@sebring-airport.com or 128 AUTHORITY LANE, SEBRING, FL 33870.**

34. **EVERIFY.** All terms defined in §448.095, Fla. Stat., are adopted and incorporated into this provision. Pursuant to §448.095, Fla. Stat., Contractor certifies that it is registered with and uses the U.S. Department of Homeland Security's E-Verify system to verify the US employment eligibility of all of Contractor's employees hired during the term of this Agreement.
35. **TIME.** Time is of the essence of this Contract.
36. **ENTIRE AGREEMENT AND MODIFICATIONS.** The parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Contract is fully integrated, supersedes all prior agreements and understandings, and contains the entire agreement between the parties. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Contract unless reduced to writing and signed by the parties.
37. **MULTIPLE ORIGINALS.** This Contract is executed in multiple copies, each of which shall be deemed an original.

[Signatures on the following page]

AGREED TO this 18th day of May, 2023.

Two Witnesses as to SAA:

SEBRING AIRPORT AUTHORITY, a body politic and corporate of the State of Florida

Beverly K. Glarner
(Printed Name) Beverly K. Glarner

By: *[Signature]*
 Mark Andrews, as its Chair or
 Peter H. McDevitt, as its Vice Chair

Colleen Plonsky
(Printed Name) Colleen Plonsky

Attest: *[Signature]*
 Stanley H. Wells, as its Secretary or
 D. Craig Johnson, as its Asst. Secretary



Two Witnesses as to Contractor:

Hydrady, Inc., a Florida corporation or limited liability company

William Freeland
(Printed Name) William Freeland

By: *[Signature]*
Mark Davideit, as its President

[Signature]
(Printed Name) Glenda Colon

(corporate seal)

Attachment A – Pricing Schedule (from Contractor’s proposal)

**DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
AND STABILIZATION SERVICES
PRICE PROPOSAL FORM**

Provide an hourly price for each of the personnel and equipment listed below. If the pricing schedules do not fit with your company's invoicing, please submit pricing for services required by this RFP (i.e., remediation; demolition; framing and rough carpentry; furniture and equipment removal; hazardous / bio-hazardous waste clean-up). If your company provides other related services, personnel, equipment, or consumable materials, please add as appropriate. Prices shall include all vehicle-use charges, mileage, travel time, insurances, overhead, etc... Any additional rates (e.g., labor on holidays) must be explained and documented in detail. Add additional pricing pages or alternative schedules as necessary.

Cost-plus pricing is prohibited. Fixed pricing is required - no price increases, fuel surcharges, or add-on costs are permitted. All contracts / notices to proceed issued will include a ceiling price that Contractor exceeds at its own risk. The Authority will award the RFP in total, by groups of items, by individual items, or any combination of these items for the best overall value to the Authority.

No.	Description	Rate (specify hourly/daily)
Equipment		<i>(rental rates may not exceed market value)</i>
1	Industrial Dehumidifier	\$92.00 / Daily
2	Commercial Air Mover	\$30.00 / Daily
3	Generator	\$320.00 / Daily
4	Air Scrubber	\$80.50 / Daily
5	Desiccant Dehumidifier	\$135.20 / Daily
6	Water Extractor System	\$0.26 / sq ft
7	Deodorizer	\$0.31 sq ft
8	Portable Lighting	\$300.00 / Daily
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
Personnel		
1	Supervisor	\$90.69 / Hourly

2	Construction Tech (Drywall, Paint, Carpenter)	\$81.35 / Hourly
3	Restoration Technician	\$67.05 / Hourly
4	Electrician	\$108.34 / Hourly
5	Plumber	\$111.82 / Hourly
6	Hazardous / Bio-Hazardous Waste Technician	\$80.61 / Hourly
7	General Laborer	\$44.86 / Hourly
8	Health and Safety Manager	\$132.17 / Hourly
9	Equipment Technician	\$62.68 / Hourly
10	Environmental Consultant	\$150.00 / Hourly
11		
12		
13		
14		
15		
16		
17		
18		

Additional Notes / Explanations: See additional Price Lists

Identify added value benefits (pro bono) that your firm will provide. Item/Description:
N/A

Proposer (Company Name): Hydradry Inc.

Authorized Representative (print): Mark Davideit

Authorized Signature: 

Date: 3/30/23



**ADDITIONAL PRICE LIST
DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
AND STABILIZATION SERVICES**

Service Call			
Description		Rate	Unit of Measure
1	Service Call all Categories	\$192.07	Per Occurrence
2	Emergency Response Service Call all Categories	\$288.12	Per Occurrence
Water & Fire Damage Services			
Description		Rate	Unit of Measure
3	Water Damage Extraction (Hard Surface)	\$0.26	Sq Ft
4	Water Damage Extraction (Carpeted Floor)	\$0.57	Sq Ft
5	Mildewcide Wall Treatment	\$0.33	Sq Ft
6	Mildewcide Floor Treatment	\$0.33	Sq Ft
7	Mildewcide Ceiling Treatment	\$0.33	Sq Ft
8	Deodorization Application	\$0.31	Sq Ft
9	Water Loss Clean Up	\$0.41	Sq Ft
10	Clean Carpet – Water Loss	\$0.50	Sq Ft
11	Content Moving	\$44.86	Hour
Drying Equipment			
Description		Rate	Unit of Measure
12	Air Mover for Water Loss	\$30.00	Day
13	Large Dehumidifier >1000 CFM	\$92.00	Day
14	Desiccant Dehumidifier	\$135.20	Day
15	Electric Trailer Dehumidifier	\$965.00	Day



**ADDITIONAL PRICE LIST
 DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
 AND STABILIZATION SERVICES**

Mold Remediation Services			
Description		Rate	Unit of Measure
16	Mold Inspection	\$55.00	Hour
17	Thermal Image Inspection (included in inspection)	No Charge	N/A
18	Air Sample Test (includes two (2) samples & report)	\$550.00	Per Occurrence
19	Additional Air Sample	\$75.00	Sample
20	General Clean Up	\$0.69	Sq Ft
21	HEPA Vacuum Ceiling	\$0.52	Sq Ft
22	HEPA Vacuum Walls	\$0.52	Sq Ft
23	HEPA Vacuum Floors	\$0.52	Sq Ft
24	Anti-Microbial Treatment	\$0.38	Sq Ft
25	Anti-Microbial Wash Ceilings	\$0.38	Sq Ft
26	Anti-Microbial Wash Walls	\$0.38	Sq Ft
27	Anti-Microbial Wash Floors	\$0.38	Sq Ft
28	Mildewcide Treat Ceilings	\$0.38	Sq Ft
29	Mildewcide Treat Walls	\$0.38	Sq Ft
30	Mildewcide Treat Floors	\$0.38	Sq Ft



**ADDITIONAL PRICE LIST
 DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
 AND STABILIZATION SERVICES**

Mold Remediation Services (Continued)			
Description		Rate	Unit of Measure
31	Mold Project Supervisor	\$90.69	Hour
32	Mold Clean Up Technician	\$80.61	Hour
33	Disposable Bags (30 gal. 50 per box)	\$37.08	Boxes
34	Equipment: <1000 CFM HEPA Air Scrubber/Neg. Air Machine	\$80.50	Day
35	Equipment: >1000 CFM HEPA Air Scrubber/Neg. Air Machine	\$126.00	Day
36	Protective Suits (PPE)-Tyvek clothing for Hazard & Safety	\$9.10	EA
37	PPE Personal Protective Equipment (Masks, Gloves, Respirator Filters, etc.)	\$13.76	EA
38	HVAC Vents and Ducts Clean	\$43.42	Per Vent
39	HVAC Return and Duct	\$46.90	Per Return
Wind Damage			
Description		Rate	Unit of Measure
40	Tarp & Sealing Service ≤ (less than or equal) 250 square feet	\$350.00	Sq Ft
41	Tarp & Sealing Services without Sandbags	\$1.67	Sq Ft
42	Tarp & Sealing with Sandbags	\$2.83	Sq Ft



**ADDITIONAL PRICE LIST
 DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
 AND STABILIZATION SERVICES**

Restoration			
Description		Rate	Unit of Measure
43	Initial Assessment & Evaluation of Structure	\$250.00	Per Occurrence
44	Content Restoration/Inventory & Salvage Logs	\$46.66	Hour
45	Pack Out	\$46.66	Hour
Equipment			
Description		Rate	Unit of Measure
46	Truck-Mounted - Light	\$0.15	Sq Ft
47	Truck-Mounted – Medium	\$0.20	Sq Ft
48	Truck-Mounted – Heavy	\$0.25	Sq Ft
Commercial Cleaning, Sterilization & Disinfection Services			
49	COVID-19 Disinfection and Decontamination Services	\$80.61	Hour
50	Carpet Cleaning	\$46.66	Hour



**ADDITIONAL PRICE LIST
 DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
 AND STABILIZATION SERVICES**

Misc. Labor – Regular Hours - Staff			
Description		Rate	Unit of Measure
51	Supervisor/Inspector/Assessor for all Categories	\$90.69	Hour
52	Hazardous Waste Technician	\$80.61	Hour
53	Bio-Hazardous Waste Technician	\$192.98	Hour
54	Cleaning Remediation Technician	\$67.05	Hour
55	General Technician/Laborer	\$44.86	Hour
56	Water Extraction & Remediation Tech	\$67.05	Hour
57	Water Extraction & Remediation Tech after hours	\$100.67	Hour
58	Fire Damage & Remediation Tech	\$67.05	Hour
59	Fire Damage & Remediation Tech after hours	\$100.67	Hour



**ADDITIONAL PRICE LIST
 DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
 AND STABILIZATION SERVICES**

Interior Scope Items			
	Description	Rate	Unit of Measure
60	Structural Drying & Dehumidification of CMU & plaster (per SF of floor area)	1 SF	\$0.62
61	Structural Drying & Dehumidification of structural framing (per SF of floor area)	1 SF	\$0.73
62	Dewatering at grade where standing water exists	1 SF	\$0.24
63	Dewatering below or sunken where standing water exist	1 SF	\$0.73
64	Remove resilient floor tile	1 SF	\$3.16
65	Remove carpet flooring	1 SF	\$0.52
66	Remove base molding (rubber, vinyl, wood)	1 LF	\$0.84
67	Remove ceramic base molding	1 LF	\$0.84
68	Remove ceiling tiles	1 SF	\$0.38
69	Remove ceramic tile (walls)	1 SF	\$0.38
70	Remove Drywall (ceiling/walls)	1 SF	\$0.88
71	Remove wall/ceiling insulation	1 SF	\$0.38
72	Clean, disinfect & Apply Anti-microbial agent (includes all porous & nonporous surfaces & contents where applicable) overall SF of damaged area	1 SF	\$0.24

**ADDITIONAL PRICE LIST
 DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
 AND STABILIZATION SERVICES**

Interior Scope Items (Continued)			
Description		Rate	Unit of Measure
Asbestos Abatement			
73	Ceiling Tile	1 SF	\$1.00
74	Asbestos Tile (VAT)	1 SF	\$3.80
75	Removal of flooring adhesive	1 SF	\$2.10
76	Water pipes	1 LF	\$3.75
77	HVAC ducts	1 LF	\$3.59
78	Drywall	1 SF	\$2.11
79	Clean wall surface	1 SF	\$0.52
80	Clean floor surface	1 SF	\$0.49
81	Remove doors	1 EA	\$0.84
82	Remove wood door & window frames	1 EA	\$0.84
83	Remove, salvage, and inventory door hardware	1 EA	\$1.00
84	Remove marker board/tack board	1 SF	\$0.34
85	Remove millwork/shelving/cabinetry	1 LF	\$0.18
86	Remove fixtures (toilet, urinal, lavatory, SS sink)	1 EA	\$7.59
87	Clean fixtures (toilet, urinal, lavatory, SS sink)	1 EA	\$30.00
88	Remove toilet partition (per stall)	1 EA	\$25.00
89	Remove wall mounted toilet accessories	1 EA	\$20.00
90	Contents removal, packing, photographs, and inventory (overall SF of damaged area). Includes appliances	1 SF	\$0.18
91	HVAC Duct Cleaning	1 LF	\$3.59
92	Dumpster load/disposal of compromised building materials and/or contents (approx. 40 yds, 7-8 tons of debris)	1 EA	\$625.00

**ADDITIONAL PRICE LIST
DISASTER RECOVERY: TEMPORARY EMERGENCY REPAIR
AND STABILIZATION SERVICES**

Exterior Scope Items			
Description		Rate	Unit of Measure
93	Tarp Roof	SF	\$1.40
94	Clean with pressure wash/chemical spray	SF	\$0.80
95	Temporary barriers and fencing	LF	\$46.00
96	Removal of Debris on Grounds (collection, hauling, and disposal)	Cu.Yd.	\$25.00

Notes:

- Prices included material, equipment, and labor
- Additional services can be quote separately

Attachment B – FHWA Form 1273

FHWA-1273 – Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. 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 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own

organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 U.S.C. Section 140, the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 U.S.C. Section 140, the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to

take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to

employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the

investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full

efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as

are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30

days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of

Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and

participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated

damages as provided in the clause set forth in paragraph (2.) of this section.

4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;

(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project.

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction,

unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (www.epls.gov), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or

local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions

and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (www.epls.gov), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and

(d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Sebring Airport Authority Agenda Item Summary

Meeting Date: May 18, 2023

Presenter: Mike Willingham

Agenda Item: SAA Minutes of 11-17-22 – Correction of Error

Background: Meeting Minutes of November 17, 2022 were prepared in error on the vote of Real Estate Consideration under Directors Business.

Attached are corrected minutes reflecting Pete McDevitt and Craig Johnson abstaining to the item.

Requested Motion: Move to approve and authorize the Chairman or Vice Chairman and Secretary or Assistant Secretary to execute corrected minutes.

Board Action:

Approved _____

Denied _____

Tabled _____

**SEBRING AIRPORT AUTHORITY
BOARD MEETING
November 17, 2022
Corrected Version**

The Sebring Airport Authority Board of Directors held a scheduled Board Meeting on November 17, 2022, at 1:30 p.m. in person and by telephone-technology conference call. A quorum was met with the following in attendance:

Carl Cool	-	Chairman
Mark Andrews	-	Vice Chairman
Stanley Wells	-	Asst. Secretary
Craig Johnson	-	Board Member
Pete McDevitt	-	Board Member
Terrill Morris	-	Board Member

Also

Mike Willingham	-	Executive Director
Beverly Glarner	-	Executive Assistant
Colleen Plonsky	-	Director of Finance
Bob Swaine	-	Swaine and Harris
Craig Sucich	-	Avcon
Alysse Hillman	-	Avcon
Kevin McCauley	-	Atkins
Joann Gaskins	-	Career Source Heartland
Tim Roland	-	SpringLake HOA Board Member

1. OPENING ITEMS

- A. Meeting was called to order at 1:30 p.m.
- B. The Invocation and Pledge were led by Bob Swaine
- C. **Roll Call**
Pete McDevitt, Carl Cool, Terrill Morris, Craig Johnson, Mark Andrews and Stanley Wells were present for the meeting. Brent Ferns was absent.
- D. **Announcements**

2. MISCELLANEOUS

3. CONSENT AGENDA

Approve the Consent Agenda:

- A. There was a motion by Mark Andrews to approve the Consent Agenda with a second by Pete McDevitt. The motion was passed with aye votes by Cool, Wells, Johnson, Andrews and Morris. McDevitt abstained.

4. ACTION ITEMS

A. Funder America – Third Modification of Lease

This item was presented by Mike Willingham. There was an amendment to the motion to allow the Executive Director to execute a Subordination Agreement that is forth coming. There was a motion by Pete McDevitt to approve the amended item with a second by Mark Andrews. The motion was passed with aye votes by Cool, Wells, Johnson, Andrews, and Morris. McDevitt abstained.

B. Resolution 22-14 Approving Budget Amendment S22-07

This item was presented by Colleen Plonsky. There was a motion by Craig Johnson to approve the item with a second by Terrill Morris. The motion was passed with aye votes by Cool, Wells, McDevitt, Johnson, Andrews, and Morris.

5. DIRECTOR REPORT

Executive Director Mike Willingham gave his report and Jason Ali updated the Board on Range activities.

6. BOARD OF DIRECTOR'S BUSINESS

Real Estate Consideration - There was a motion by Mark Andrews and a second by Stanley Wells to accept purchase offer subject to:


1. City of Sebring and Highlands County Board of County Commissioners having no objections to the Sale
2. FAA approval to sell said property and remove property from Schedule A Property Map in Airports Master Plan.
3. SAA Ex. Director to approve all future Restrictions and/or Conditions for the improvements of the Property

The motion was passed with aye votes by Cool, Wells, Andrews, and Morris. McDevitt and Johnson abstained.

7. CONCERNS OF THE PUBLIC

8. ADJOURNMENT

Chairman adjourned meeting at 2:10pm.



Mike Willingham, Executive Director

5-18-23

Approved by Board

RESOLUTION SAA 23-05

**A RESOLUTION OF THE SEBRING AIRPORT
AUTHORITY TO APPROVE AMENDMENT S23-03 TO
THE 2022-2023 BUDGET.**

WHEREAS, The Sebring Airport Authority is required to have an operating budget; and

WHEREAS, said budget is to be used as a tool to project revenues, expenses, and reserves; and

WHEREAS, said budget is to be used as a control of costs and expenditures; and

WHEREAS, said budget can be amended from time to time by action of the Sebring Airport Authority Board of Directors;

NOW, THEREFORE, BE IT RESOLVED BY A MAJORITY OF THE MEMBERS OF THE SEBRING AIRPORT AUTHORITY AS FOLLOWS:


SECTION 1. The Sebring Airport Authority hereby approves the 2022-2023 Budget Amendment S23-03 as presented.

SECTION 2. This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this 18th day of May 2023.




SEBRING AIRPORT AUTHORITY

By: 
Mike Willingham, Ex. Director

SEBRING AIRPORT AUTHORITY
 BUDGET AMENDMENT# S23-03
 EFFECTIVE ACCOUNTING PERIOD: March 2023

5/18/2023

SUBMITTED BY: Colleen Plonsky
 SIGNED BY: 

REVENUE CENTER	ACCOUNT	ACCOUNT NAME	PRIOR BUDGET AS OF 10/01/2022	INCREASE	DECREASE	REVISED BUDGET	Reason:
FBO	344-019-FBO	GPU USAGE FEES	\$ 500.00	\$ 700.00		\$ 1,200.00	BUDGET UNDERSTATED
FBO	360-000-FBO	FBO MISCELLANEOUS INCOME	\$ 3,500.00	\$ 3,500.00		\$ 7,000.00	BUDGET UNDERSTATED
			\$ -	\$ -		\$ -	
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Total Revenue Increase/Decrease			\$ 4,000.00	\$ 4,200.00		\$ 8,200.00	
COST CENTER (expenses)							
FBO	512-061-FBO	FBO COMPUTER ACCESSORIES	\$ 500.00	\$ 900.00		\$ 1,400.00	BUDGET UNDERSTATED
SAA	512-061-SAA	SAA COMPUTER ACCESSORIES	\$ 8,000.00	\$ 8,000.00		\$ 16,000.00	BUDGET UNDERSTATED
			\$ -	\$ -		\$ -	
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Total Expenses Increase/Decrease			\$ 8,500.00	\$ 8,900.00		\$ 17,400.00	
Capital Expenditures Adjustments							
			Prior Month Budgeted Operating Reserve	Current Month Revenue - Inc/(Dec)	Current Month Expense - Inc/(Dec)	Revised Budgeted Operating Reserve	
			\$553,038.00	\$ 4,200.00	\$ 8,900.00	\$548,338.00	

REQUEST #: S23-03

BOARD APPROVAL:

TRANSFER TYPE:

- ITEM TO ITEM
- OPERATING RESERVE
- BY RESOLUTION # SAA 23-05

Executive Director



KA PROPERTY MANAGEMENT LLC

15202 Brolio Way, Naples FL 34110 410 608 0307

May 6, 2023

Michael Willingham, Executive Director
Sebring Airport Authority
128 Authority Lane
Sebring FL 33870

RE: Sebring Projects Letter of Intent

Dear Mike,

As per our various discussions, we propose to enter into negotiations with the Sebring Airport Authority ("SAA"), with a view to reaching definitive legally-binding agreements for acquisition of certain parcels of unimproved and semi-improved land (the "Land") that are owned or controlled by SAA, along the general lines set forth in this non-binding Letter of Intent ("LOI"), to build and operate a Flight Academy for training commercial pilots (the "Academy Project"), and for the other purposes described herein.

1. The Buyers. The Buyers will consist of two limited liability companies to be formed, referred to herein as "Academy Project LLC" and "Flex Project LLC". The initial membership of Academy Project LLC will consist of the undersigned George Klopfer. I may elect to bring other equity investors into this company at a later date, but I would remain the Managing Member. The initial membership of Flex Project LLC will consist of Matthew S. Polk Jr. and Gary B. Davis, who are partners with me in real estate and other investment ventures of various types. I will not be an initial member of Flex Project LLC. Rexair LLC ("Rexair"), an established flying school operator based at Naples Airport in Naples, Florida (KAPF), will be the tenant with respect to the Academy Project as further described herein. Rexair is experienced in the management and operation of FAA-approved flight training and aircraft maintenance operations. I am a real estate investor, with a primary focus on industrial properties. The relationship envisioned between Academy Project LLC and Rexair, after completion of the development phase of the Academy Project, is that of landlord and tenant, and not a partnership or joint venture. More detailed information on Rexair, and on my activities as a real estate investor, is included in the Business Plan attached as Appendix A below.

2. The Academy Project. The Rexair Flight Academy ("RAFA") is intended to provide comprehensive, *ab initio* training services for students planning to pursue professional careers in commercial aviation as pilots. Its operations would be conducted at two closely-linked physical premises: an on-airport Airside parcel of land, and an off-airport Campus parcel of land. The Academy Project would be built out in two approximately equal phases; at completion it would have a nominal capacity to graduate 176 pilots per year. RAFA's on-airport operations would include ramp tie-downs for a training fleet of approximately 44 aircraft, and up to two maintenance hangars to keep those aircraft flying and to provide protected storage for the more valuable ones. These Airside operations would require approximately 2.3 acres of on-airport land. RAFA's off-airport operations would consist of an approximately 7.7 acre multi-building off-airport campus site (the "Campus Parcel") located near the intersection of Haywood Taylor Blvd. and US98, including classroom and administrative buildings, and full residential and dining facilities for the entire

student population. A fuller description of the Academy Project including general preliminary site layouts of the proposed on-airport and off-airport operations are attached to this Letter of Intent and/or in the RAFA Business Plan attached as Appendix A.

3. The Flex Project. The Flex Project is intended to be built and held as a portfolio rental "flex" commercial/light industrial property, for a single or multiple commercial or private tenants needing commercial or light industrial space in size increments ranging between the entire 20,000 square foot size of the building, down to demised units which can be as small as 2,500 square feet.

4. Investments and Employment. The Academy Project and Flex Project will involve substantial investments in the local economy and will generate significant employment opportunities locally.

4.1 We currently estimate the total capital investment required to bring the Academy Project to full development will be of the order of \$21 million, of which the real property development portions would constitute approximately \$10 million. The major investments required would include approximately \$9 million for the Campus land and buildings, and approximately \$10 million to acquire the necessary fleet of training aircraft. The remaining \$2 million would be required to construct the Airside facilities, and to acquire flight simulators and other equipment required to carry out planned operations. RAFA's facilities would be physically configured to serve groups of 88 students at a time, and would create approximately 40 to 50 full time jobs when in full operation.

4.2 The capital investment required for construction of the Flex Project building will be on the order of \$4 million. Until the actual tenancies are known, it is not possible to estimate what additional capital investments may be made by tenants, or what their employment requirements are likely to be.

5. The Land. The Buyers propose to acquire three (3) separate parcels of land ("Parcels") from SAA to carry out the above-described Projects.

5.1 The on-airport Airside Parcel, consisting of a section of partially-paved land on the airport grounds, in the shape of an irregular oblong approximately 530' long by 220' wide, comprising approximately 2.3 acres and located immediately to the northwest of the Control Tower, would be acquired through a ground lease between SAA as lessor and Academy Project LLC as lessee, and would be occupied by RAFA pursuant to a sublease, as RAFA's Airside operation. Ground rents would be charged at \$0.15 per square foot per year, subject to adjustment after the initial year as the parties may hereafter agree. The Ground Lease term, renewal options and other conditions would be mutually determined by further negotiation between the parties.

5.2 The two off-airport Parcels would consist of two contiguous tracts to be legally subdivided before or at closing, from a single existing approximately 42 acre tract of land lying along the west side of Haywood Taylor Boulevard immediately south of the Airport, at the intersection of US 98 (the "Haywood Taylor Tract"). A preliminary site plan for the proposed subdivision of the Haywood Taylor Tract is included in the Appendix below.

5.2.1 The northern subdivided portion of the Haywood Taylor Tract would be an approximately 7.7 acre parcel that would be acquired by Academy Project LLC and occupied by RAFA pursuant to a commercial lease, as RAFA's Campus operation (the "Campus Parcel").

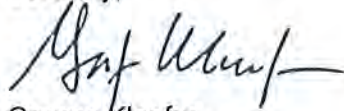
5.2.2 The southern subdivided portion of the Haywood Taylor Tract would be an approximately 6.6 acre parcel that would be acquired by Flex Project LLC, and developed with a proposed commercial flex building of approximately 20,000 sq ft floor area to be demised into smaller rental parcels tailored to suit the needs of local tenants/users (the "Flex Parcel").

5.2.3 Subject to the foregoing and to further due diligence as set forth herein, Academy Project LLC would propose to acquire the approximately 7.7 acre Campus Parcel in fee simple without unapproved encumbrances for a cash price of \$500,000; and Flex Project LLC would propose to acquire the approximately 6.6 acre Flex Parcel in fee simple without unapproved encumbrances for a cash price of \$429,000. The foregoing price proposals are calculated at \$65,000 per acre, based upon guidance provided by SAA to us regarding the acreage of said Parcels. They are subject to further confirmation by survey.

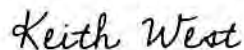
Subject to reaching a general agreement on pricing along the lines proposed in this non-binding Letter of Intent, and in further consideration of being given exclusive negotiating rights for a limited period of time sufficient to make an adequate further investigation, the Buyers and Rexair would be willing to concentrate their collective further efforts on investigating Sebring as a proposed site for the Academy Project and suspend negotiations with other parties while such investigations are ongoing. Owing to the extent, complexity and substantial cost of the Buyers' due diligence work that would remain to be completed, and because of certain pre-existing overseas travel commitments of mine, the Buyers would need a feasibility study period of five (5) months from the date of this Letter of Intent, with the further understanding that SAA would not unreasonably refuse to extend that due diligence period if the Buyers uncover material conditions or circumstances affecting its plans that have not already become known to it as of the date of this offer.

We hope you will find the foregoing proposal attractive, and supportive of your own goals for further development of the Sebring Airport as a regional commercial hub. If the foregoing meets with your approval, please indicate your willingness to enter into an exclusive negotiating arrangement with us, from now until October 6, 2023, by countersigning this Letter of Intent in the space indicated.

Cordially,



George Klopfer
On behalf of the Buyers



Keith West
On behalf of Rexair

Accepted and Agreed:
Sebring Airport Authority

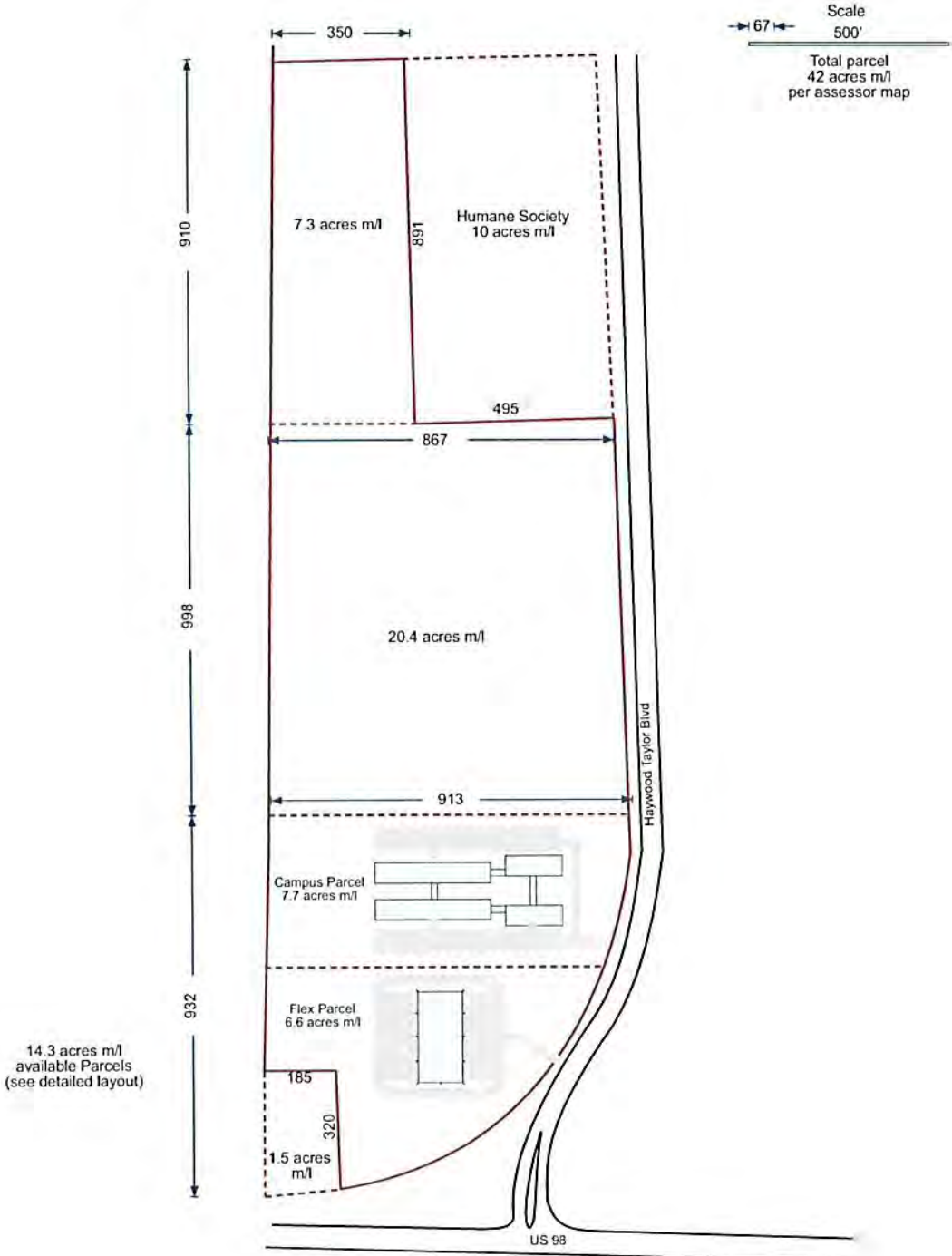
Michael Willingham (date)
Executive Director

Attachment 1: The Haywood Taylor Tract

OFF AIRPORT LAND PARCEL AT HAYWOOD TAYLOR BOULEVARD
AND US 98, SEBRING FLORIDA

Test Fit for Flight Academy Campus
and Commercial Flex Building Development
Boundaries scaled from tax map

May 4, 2023



Attachment 2: the Subdivided Off-Airport Parcels

**REXAIR FLIGHT ACADEMY PROJECT
AND FLEX BUILDING PROJECT**

Haywood Taylor Blvd Site Layout

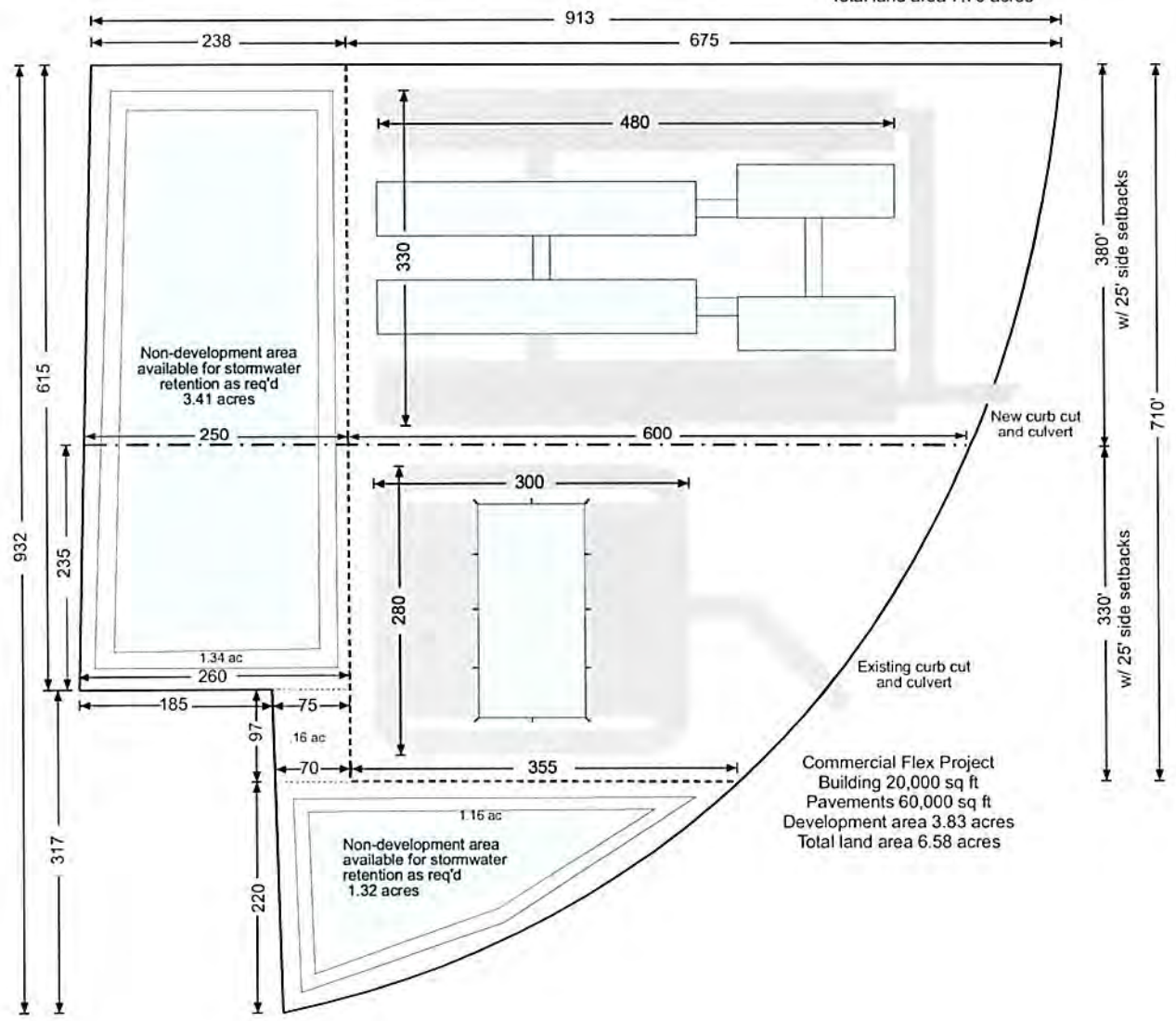
Buildings area 65,000 sq ft (FAR 11%)
Pavements area 135,000 sq ft
Impermeable area 200,000 sq ft (32%)
Total development area 9.55 acres
Non-development area 4.73 acres
Total land area 14.28 acres

May 4, 2023

Stormwater runoff calculation:
9.55 acres development area =
415,998 sq ft
x 1" rainfall coverage = 34,667 cu ft
= 0.80 acre-feet

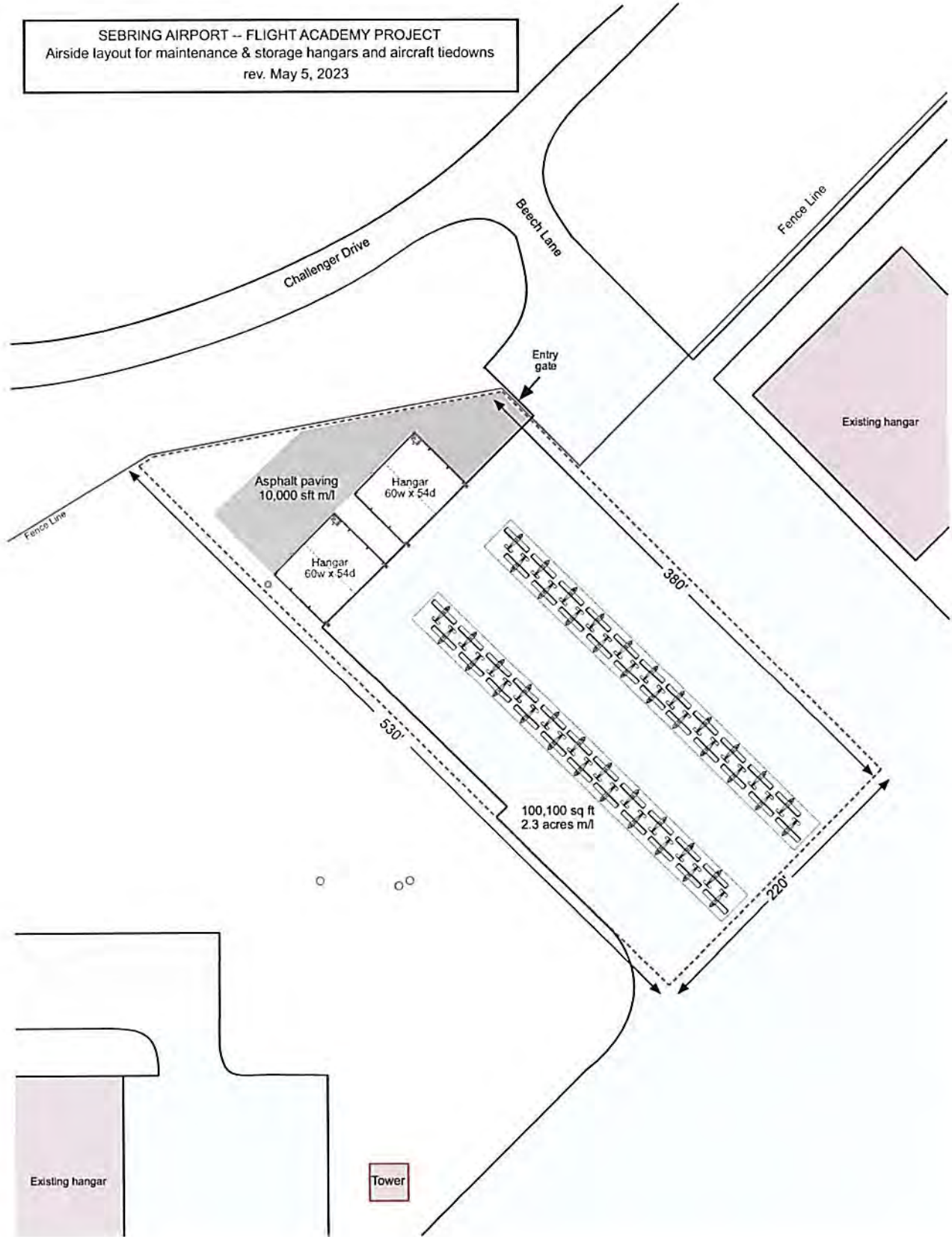
Flight Academy Campus
Buildings 45,000 sq ft
Pavements 75,000 sq ft
Development area 5.72 acres
Total land area 7.70 acres

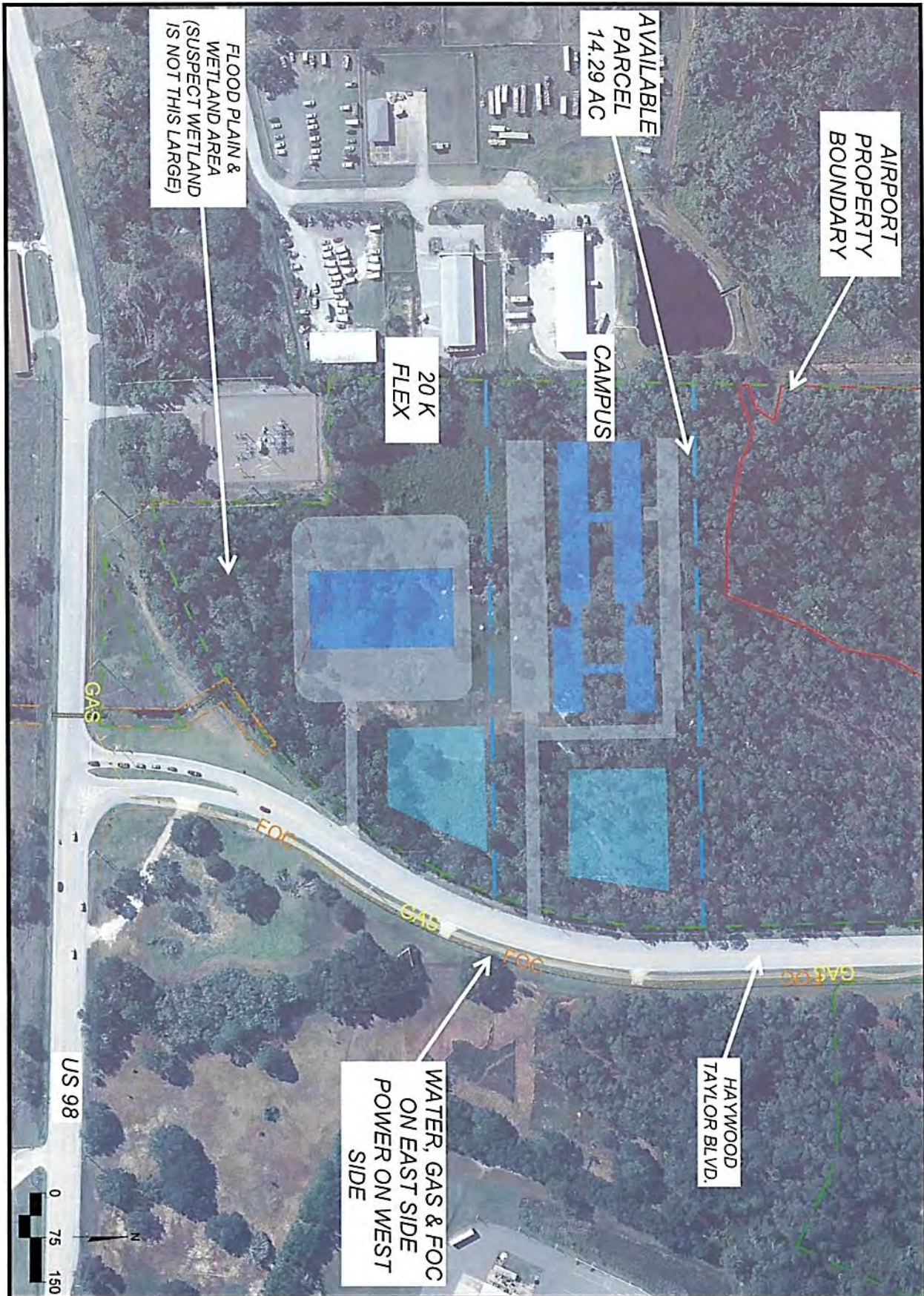
Commercial Flex Project
Building 20,000 sq ft
Pavements 60,000 sq ft
Development area 3.83 acres
Total land area 6.58 acres



Attachment 3: the Airside Parcel

SEBRING AIRPORT -- FLIGHT ACADEMY PROJECT
Airside layout for maintenance & storage hangars and aircraft tiedowns
rev. May 5, 2023





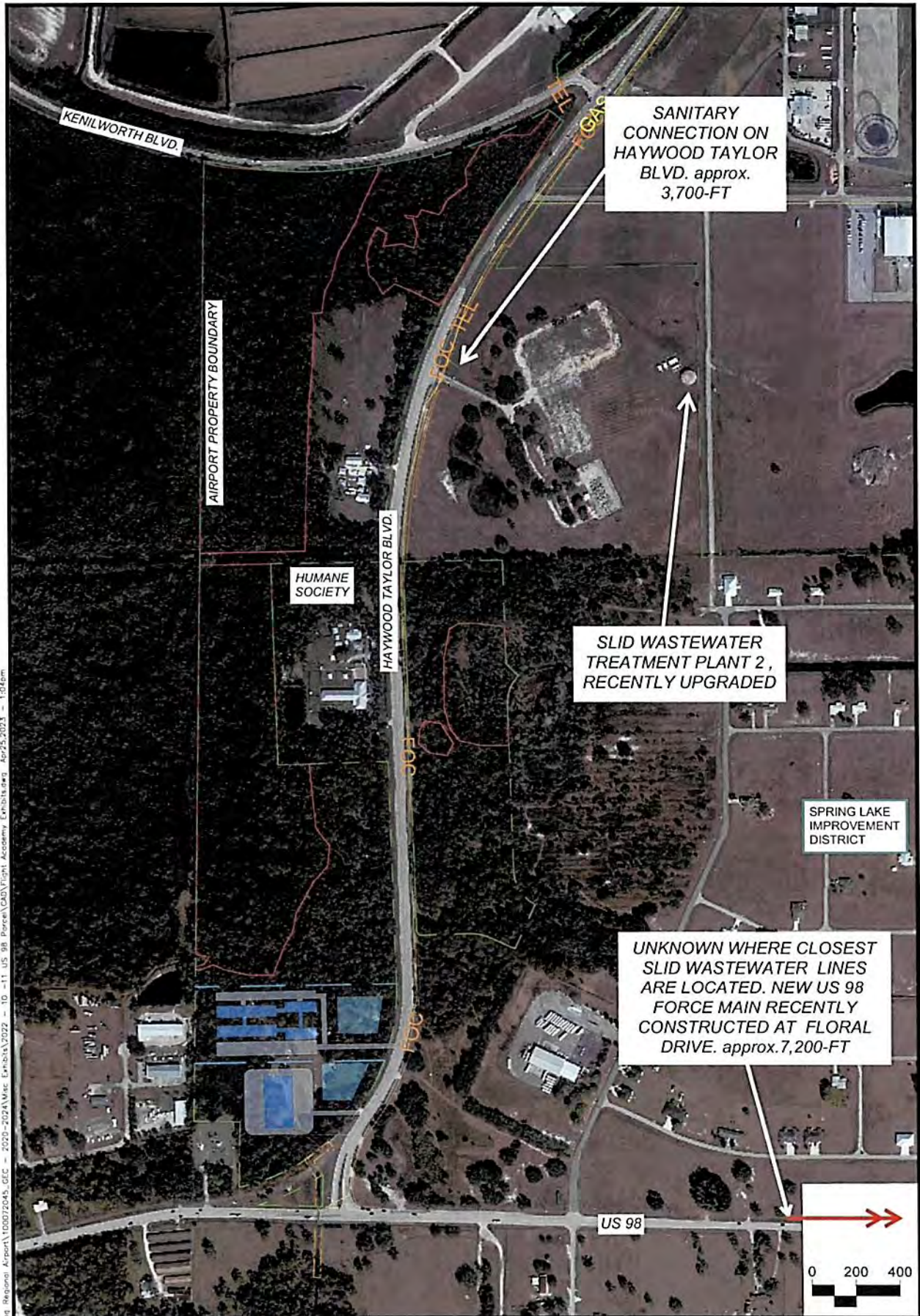
SEBRING
 INTERNATIONAL LOGISTICS CENTER
 ATKINS
 442 S. KELLER ROAD, S. 300
 ORLANDO, FL 32810
 TEL: 407.947.7775
 FAX: 407.964.4300
 E-MAIL: CERTIFICATE@ATKINS.COM
 WWW.ATKINSGLOBAL.COM

JOB NO: 1000000000
 DRAWN:
 CHECKED:
 SHEET NO: **1**

CLIENT: **SEBRING REGIONAL AIRPORT**
 PROJECT: **SITE VIEW EXISTING R/W**
 SHEET TITLE: **FLIGHT ACADEMY**

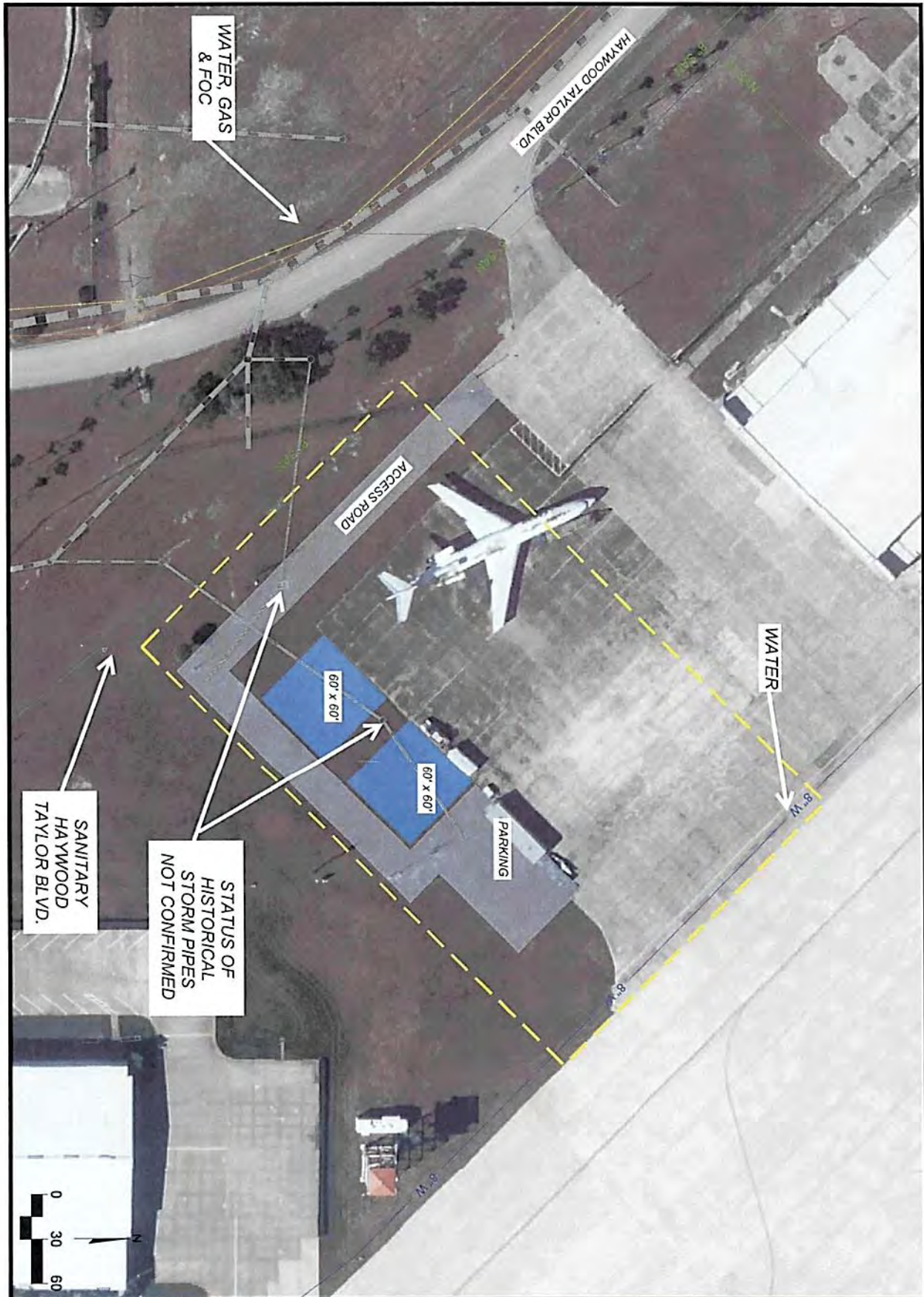
NOT APPROVED FOR CONSTRUCTION
 ENGINEER OF RECORD
 RICHARD A. WAMRZNYK, PE
 FE NO. 34925

NO.	DATE	ISSUED FOR	DATE	DESC OF REVISIONS
1	5/23			
2				
3				
4				
5				



Plotted By: C01072619
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<p>432 South Koller Road Orlando, FL 32810 Tel: (407) 647-7275 Fax: (407) 806-4500 www.atkinsglobal.com/northamerica</p>	<p>SEBRING MULTIMODAL LOGISTICS CENTER</p>	<p>SEBRING REGIONAL AIRPORT</p>	<p>FLIGHT ACADEMY UTILITIES</p>	<p>2</p>
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SEBRING
 NATIONAL LOGISTICS CENTER
 ATKINS
 487 S. KELLER ROAD, S. 300
 ORLANDO, FL 32810
 TEL: 407.641.7775
 FAX: 407.641.7776
 PAPER: 407.656.4882
 AUTHORIZATION NO. 24
 WWW.ATKINSGLOBAL.COM

CLIENT
SEBRING REGIONAL AIRPORT

PROJECT
FLIGHT ACADEMY

SHEET TITLE
AIRSIDE LAYOUT - HANGARS

NOT APPROVED FOR
 CONSTRUCTION
 ENGINEER OF RECORD
 RICHARD A. WAWRZYNIAK, PE
 PE NO. 34935

NO.	DATE	ISSUED FOR	BY	DATE	DESC. OF REVISIONS

JOB NO. 10000300X
 DRAWN
 CHECKED
 SHEET NO. **3**