AMENDMENT NO. 15 TO
COMPREHENSIVE DEVELOPMENT AGREEMENT
FOR A CONCESSION
NORTH TARRANT EXPRESS FACILITY

THIS AMENDMENT NO. 15 TO COMPREHENSIVE DEVELOPMENT AGREEMENT ("Amendment") is entered into and effective as of 10/21/2020 between the Texas Department of Transportation, a public agency of the State of Texas ("**TxDOT**"), and NTE Mobility Partners LLC, a Delaware limited liability company ("**Developer**"), with reference to the following facts:

RECITALS

A. TxDOT and Developer entered into that certain Comprehensive Development Agreement for a Concession, North Tarrant Express Facility, dated as of June 23, 2009 (the "**CDA**"), together with related agreements collectively referred to in the CDA as the "CDA Documents".

B. TxDOT and Developer now desire to update and clarify the CDA in connection with certain federal requirements and related provisions, including FHWA Form 1273 (federal contract requirements), On the Job Training (OJT) provisions, Disadvantaged Business Enterprise (DBE) and Developer Job Training Plan provisions, and subcontractor payment provisions, as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TxDOT and Developer agree as follows:

1. Definitions. All capitalized terms used but not defined in this Amendment have the respective meanings set forth in the CDA.

2. CDA Section 10.1. Section 10.1.2 is hereby amended to read as follows:

As soon as Developer identifies a potential Key or Affiliate Contractor for a potential Key or Affiliate Contract described in the first sentence of Section 10.1.1, but in no event later than five days after the Key or Affiliate Contract is executed, Developer shall notify TxDOT in writing of the name, address, phone number and authorized representative of such Key or Affiliate Contractor.

3 CDA Section 10.9.

(a) The second sentence of Section 10.9.1.1 is hereby amended to read as follows:

The purpose of the DBE Special Provisions is to ensure that DBEs shall have an equal opportunity to participate in the performance of contracts funded in whole or in part with federal financial assistance (i.e., "federally assisted").

(b) Section 10.9.1.2 is hereby amended to read as follows:

10.9.1.2 Except for the NTTA Tolling Services Agreement, Developer shall include provisions to effectuate the DBE Special Provisions and then-current federal requirements in every federally-assisted Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all such Contracts at lower tiers (including

purchase orders and task orders for Work), so that such provisions will be binding upon each Contractor.

(c) Section 10.9.2.2 is hereby amended to read as follows:

10.9.2.2 Developer shall exercise and document the adequacy of its good faith efforts, in accordance with 49 CFR Part 26, Appendix A, to achieve such DBE participation goal for the Project through implementation of Developer's approved DBE Performance Plan. For federally-assisted Work performed after Final Acceptance of the Facility, including federally-assisted Capacity Improvements or TxDOT Change Orders, Developer shall submit to TxDOT and obtain TxDOT's approval of (1) an updated DBE Performance Plan for the federally-assisted Work to be performed, and (2) a schedule and commitments for work identified for participation by DBEs.

(d) Section 10.9.2.3 is hereby amended to read as follows:

10.9.2.3 Developer agrees to use good faith efforts to encourage DBE participation in federally assisted Work performed after Final Acceptance, including federally assisted Capacity Improvements of TxDOT Change Orders.

3. CDA Section 10.10.

(a) Section 10.10.1 is hereby amended to read as follows:

10.10.1 Developer's Job Training Plan applicable to the Project is set forth in Exhibit 17. The purpose of the Job Training Plan is to ensure that inexperienced and untrained workers have a substantial opportunity to participate in the performance of the Work through apprenticeships, training and similar measures to maintain and grow a diverse, skilled work force. Developer shall perform and comply with all requirements set forth in the Job Training Plan in every federally-assisted Contract.

(b) Section 10.10.2 is hereby amended to read as follows:

10.10.2 Developer shall include provisions to effectuate the On-the-Job Training Program Special Provisions in every federally-assisted Contract to which it is a party (including purchase orders and task orders for Work), and shall require that they be included in all such Contracts at lower tiers (including purchase orders and task orders for Work), so that such provisions will be binding upon each Contractor. The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities. For federally-assisted Work performed after Final Acceptance of the Facility, including federally-assisted Capacity Improvements and TxDOT Change Orders, Developer shall submit to TxDOT and obtain TxDOT's approval of an updated Job Training Plan for the federally-assisted Work to be performed.

4. CDA Section 10.13.2. Section 10.13.2 is hereby amended to read as follows:

10.13.2 The foregoing payment requirements apply to all tiers of subcontractors, including Suppliers, and shall be incorporated into all subcontracts. Developer shall encourage its Contractors to remit payment to all subcontractors and Suppliers within 30 days after receipt of a proper invoice, even if payment has not been received from TxDOT.

5. CDA Section 10.11.2. The first sentence of Section 10.11.2 is hereby amended to read as follows:

Developer shall make a good faith effort to negotiate with CRPs and the Texas Industries for the Blind and Handicapped (TIBH) for appropriate subcontracts at a fair market price.

6. CDA Section 10.12. Section 10.12.1 is hereby amended to read as follows:

Developer shall pay or cause to be paid to all applicable workers employed by it or its Contractors to perform the Work not less than the prevailing rates of wages, as provided in the statutes and regulations applicable to public work contracts, including Chapter 2258 of the Texas Government Code and the Davis-Bacon Act, and as provided in Exhibit 8. Developer shall comply and cause its Contractors to comply with all Laws pertaining to prevailing wages. For the purpose of applying such Laws, the Project shall be treated as a public work paid for in whole or in part with public funds (regardless of whether public funds are actually used to pay for the Project). The foregoing shall not apply to Contracts at any tier with TxDOT or Governmental Entities. Notwithstanding anything to the contrary herein, reporting requirements are not applicable to categories of workers performing non-federally assisted operations and maintenance Work.

7. CDA Exhibit 8, Attachments 1 and 2. Attachments 1 and 2 to Exhibit 8 are hereby replaced by the updated and amended versions attached hereto as Exhibits A and B, respectively.

8. CDA Exhibit 13. The DBE Special Provision in Exhibit 13 is hereby replaced by the DBE Special Provision for Non-Traditional Contracts, attached hereto as Exhibit D.

9. CDA Exhibit 15, Appendix A. The On-the-Job Training Program Special Provision in Appendix A of Exhibit 15 is hereby replaced by the On-the-Job Training Special Provision for Design Build and Comprehensive Development Projects, attached hereto as Exhibit C.

10. Effectiveness of CDA Documents. Except as specifically amended hereby, the provisions of the CDA Documents (including all prior written amendments thereto) are hereby confirmed and remain in full force and effect without change.

11. Binding Effect of Amendment. This Amendment is entered into pursuant to Section 24.3 of the CDA, and shall be valid, effective and enforceable notwithstanding Section 24.13 of the CDA or any similar provision in any other CDA Document declaring that the CDA Document constitutes the sole, integrated agreement of the Parties.

12. Modifications and Waivers. This Amendment may be amended only by a written instrument duly executed by the Parties or their respective permitted successors or assigns under the CDA. No waiver of any term, covenant or condition of this Amendment shall be valid unless in writing and signed by the Party benefitted by the term, covenant or condition. The foregoing provisions shall not be construed to curtail or waive TxDOT's rights under the CDA to issue Directive Letters and Change Orders.

13. Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of TxDOT and Developer and their permitted successors and assigns under the CDA.

14. No Third-Party Beneficiaries. It is not intended by any of the provisions of this Amendment to create any third-party beneficiary hereunder or to authorize anyone not a Party hereto to maintain a suit pursuant to the terms or provisions hereof.

15. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

16. Jurisdiction and Venue. The Parties agree that the exclusive original jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of this Amendment shall be the district courts of Travis County, Texas.

17. Entire Agreement. This Amendment contain the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the Parties with respect to such subject matter.

18. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page immediately follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the day and year first written above.

Developer

NTE MOBILITY PARTNERS LLC

DocuSigned by:

By: _____

Name: Alberto González Lalueza

Title: Chief Executive Officer

DocuSigned by:

By: _____

Name: Luis Vazquez

Title: Deputy Chief Executive Officer

TxDOT

TEXAS DEPARTMENT OF TRANSPORTATION

DocuSigned by:

By: _____

Name: James M. Bass

Title: Executive Director

EXHIBIT A

ATTACHMENT 1 TO EXHIBIT 8

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 8. Whenever in said required contract provisions references are made to:

(a) "contracting officer" or "authorized representative" such references shall be construed to mean TxDOT or its Authorized Representative;

(b) "contractor", "prime contractor", "bidder", "Federal-aid construction contractor" "prospective first tier participant" or First Tier Participant such references shall be construed to mean Developer or its authorized representative and/or the Design-Build Contractor or its authorized representative, as the case may be;

(c) "contract", "prime contract", "Federal-aid construction contract" or "design-build contract", such references shall be construed to mean the Comprehensive Development Agreement between Developer and TxDOT for the Project and/or the Design-Build Contract;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant", lower tier prospective participant", "Lower Tier participant" or "lower tier subcontractor", such references shall be construed to mean any Contractor (other than NTTA or the Design-Build Contractor) or Supplier; and

(e) "department", "agency", "department or agency with which this transaction originated" or "contracting agency" such references shall be construed to mean TxDOT, except where a different department or agency or officer is specified.

PERFORMANCE OF PREVIOUS CONTRACT. — In addition to the provisions in Section II, "Nondiscrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, Developer shall cause the contractor to comply with the following:

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

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator

of the contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C., Sec. 1746, is included in the Proposal.

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

CONVICT PRODUCED MATERIALS

a. FHWA Federal-aid projects are subject to 23 CFR § 635.417, Convict produced materials.

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

ACCESS TO RECORDS

a. As required by 2 CFR 200.336, Developer and its contractors and subcontractors shall allow FHWA, Inspectors General and the Comptroller General of the United States, or any of their authorized representatives, access to any documents, papers or other records of Developer, contractors and subcontractors which are pertinent to the Federal award in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the personnel of Developer, its contractors and subcontractors for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. In addition, Developer and its contractors and subcontractors shall retain all such documents, papers and records, including financial records, supporting documents and statistical records, for the period prescribed by 2 CFR 200.333.

b. Developer agrees to include this section in each contract and subcontract at each tier, without modification except as appropriate to identify the contractor or subcontractor who will be subject to its provisions.

EXHIBIT B

ATTACHMENT 2 TO EXHIBIT 8

Required Contract Provisions
Federal Aid Construction Contracts

FHWA Form 1273 – May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

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

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

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

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

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

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

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable 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 (https://www.epls.gov/), which is compiled by the General Services Administration.

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

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

* * * * *

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

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

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

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

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

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

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

2. **Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

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

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

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

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

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

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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.

EXHIBIT C

SPECIAL PROVISION

On-the-Job Training Program for
Design-Build and Comprehensive Development Agreement Projects

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

By signing the Design-Build Contract, the DB Contractor certifies that it will meet the On-the-Job Training (OJT) goal as stated in the Special Provision or, if the OJT goal as stated in the Special Provision is not met, the DB Contractor will provide acceptable evidence of good faith efforts, including as described in section 6 hereof, to meet the OJT goal.

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

1. The DB Contractor shall ensure that on-the-job training aimed at developing full journey worker status in the type of trade or job classification involved is provided.

2. The Department has assigned a project-specific trainee goal in accordance with the following guidelines as set forth in 23 C.F.R.§230.111:

    1) Dollar value of the construction services contract;
    2) Duration of the construction work activity;
    3) Geographic location;
    4) Availability of minorities, women, and disadvantaged for training;
    5) The potential for effective training;
    6) Type of work;
    7) Total normal work force that the average proposer could be expected to use;
    8) The need for additional journeymen in the area;
    9) Recognition of the suggested minimum goal for the State; and
    10) A satisfactory ratio of trainees to journeymen expected to be on DB Contractor's work force during normal operations.

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

3. The OJT program trainee goal for this project is [ ] trainees.

4. The DB Contractor will have fulfilled its responsibilities under this provision when acceptable training has been provided to the number of trainees assigned to this project.

5. In the event that DB Contractor subcontracts a portion of the contract work, it shall determine if any of the trainees are to be trained by the subcontractor. The DB Contractor should ensure that this training special provision is made applicable to such subcontract. However, DB Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision.

6. The DB Contractor shall make every effort to ensure minorities and women are enrolled and trained in the program. The DB Contractor shall conduct systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that such persons are available within a reasonable area of recruitment.

7. It is the intention of this provision that training is to be provided in the construction crafts. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

8. The Department and the Federal Highway Administration (FHWA) shall approve a training program if it meets the equal employment opportunity obligations of DB Contractor and aims to train and upgrade employees to journey worker status.

9. The Department's OJT Program has been designed to ensure that the trainee consistently receives the level and quality of training necessary to perform as a journey worker in his/her respective skilled trade classification. Standard training programs for each skilled construction trade classification are located in the OJT program manual.

10. Apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided the program is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts.

11. The number of trainees shall be distributed among the work classifications on the basis of DB Contractor's needs and the availability of journey worker in the various classifications.

12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. The DB Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, DB Contractor's records should document the findings in each case.

13. At or before contract execution, DB Contractor must submit the Contractor OJT Plan form to the Department's Civil Rights Division (CIV). The plan shall specify how DB Contractor intends to satisfy its goal by including the following information: the type of apprentice or training program, number of trainees, type of training, and length of training. This becomes Exhibit 5 of the DBA.

14. The trainee(s) shall begin training on the project after start of work and remain on the project as long as training opportunities exist or until the training is completed.

15. The trainees will be paid at minimum, 60 percent of the appropriate journey worker's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. However, if the apprentices or trainees are enrolled in another program approved by the Department of Labor or other agency, such appropriate rates shall apply.

16. CIV must approve all proposed apprentices and trainees before training begins. The DB Contractor must submit the Federal OJT Enrollment Form to SharePoint and CIV. CIV must approve the enrollment in order for training to be counted toward the project goal and be eligible for reimbursement. The DB Contractor shall provide each trainee with a copy of the training program he or she will follow.

17. On a monthly basis, DB Contractor shall submit the Federal OJT Monthly Reporting Form to the District Representative and to CIV. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, DB Contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

18. The DB Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

19. If requested, DB Contractor may be reimbursed 80 cents per hour of training for each trainee working on this project and whose participation towards the OJT project goal has been approved.

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

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

20. Compliance: The [design-builder/developer] shall maintain records and submit monthly reports documenting program performance by the 10th of each month. Noncompliance may be cause for corrective and appropriate measures pursuant to Section 8.8 "Termination," which may be used to comply with the sanctions for noncompliance pursuant to 23 CFR Part 230.

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

EXHIBIT D

DBE SPECIAL PROVISION
FOR NON-TRADITIONAL CONTRACTS

Disadvantaged Business Enterprise in Federal-Aid Contracts

1. DESCRIPTION

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted contracts.

2. DISADVANTAGED BUSINESS ENTERPRISE IN FEDERAL-AID CONTRACTS

2.1. **Policy**. It is the policy of the DOT and the Texas Department of Transportation (Department) that DBEs, as defined in 49 CFR Part 26, Subpart A, and the Department's DBE Program, will have the opportunity to participate in the performance of contracts financed in whole or in part with federal funds. The DBE requirements of 49 CFR Part 26 and Department's DBE Program apply to this Design-Build Contract as follows.

The DB Contractor will solicit DBEs through reasonable and available means (reasonable and available means as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program), or show Good Faith Efforts to meet the DBE goal for this Design-Build Contract.

The DB Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin or sex in the performance of this Design-Build Contract. The DB Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Design-Build Contract. Failure to carry out these requirements is a material breach of this Design-Build Contract, which may result in the termination of this Design-Build Contract or such other remedy as the Department deems appropriate.

The requirements of this Special Provision must be physically included in any subcontract including all tiers of subcontracts.

By signing the Design-Build Contract, the DB Contractor certifies that the DBE goal as stated in the Design-Build Contract will be met by obtaining commitments from DBEs or that, if the DBE goal as stated in the Design-Build Contract is not met, the DB Contractor will provide acceptable evidence of Good Faith Efforts to meet the DBE goal.

2.2. **Definitions**. The following terms, when used in this Special Provision, shall have the meanings set forth below. Capitalized terms not defined below shall have the meanings set forth in Item 1 of the General Conditions.

2.2.1. **Administrative Reconsideration**. A process by which the DB Contractor may request reconsideration of the Department's determination that the DBE goal has not been met or the Good Faith Efforts requirements have not been met.

2.2.2. **Commercially Useful Function (CUF)**. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually

performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. (ref. 49 CFR Part 26, Subpart C (26.55))

2.2.3. **DBE Joint Venture**. An association of a DBE firm and one or more other firms to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the Design-Build Contract and whose share in the capital contribution, control, management, risks and profits of the joint venture are commensurate with its ownership interest.

2.2.4. **Department**. The Texas Department of Transportation.

2.2.5. **Disadvantaged Business Enterprise (DBE)**. A for-profit small business certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26, (a) that is at least 51% owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, in which at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals, and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2.2.6. **DOT**. The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

2.2.7. **Federal-Aid Contract**. Any contract between the Department and a design-build contractor that is paid for in whole or in part with DOT financial assistance.

2.2.8. **Good Faith Effort**. All necessary and reasonable steps to achieve the DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good Faith Efforts are evaluated prior to award and throughout performance of the Design-Build Contract. For guidance on good faith efforts, see 49 CFR Part 26, Subpart C and 49 CFR Part 26, Appendix A.

2.2.9. **North American Industry Classification System (NAICS)**. A designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau website: http://www.census.gov/eos/www/naics/.

2.2.10. **Prompt Payment** – Federal regulations and state law require DB Contractor and its subcontractors to pay their subcontractors within 10 days of receiving corresponding payment for the applicable scope of the work. This requirement includes the release of retainage when a subcontractor's work is satisfactorily complete, even if final acceptance has not occurred. State law requires that a contractor that withholds retainage on a subcontractor's work shall pay that retainage in full within 10 days after the date of satisfactory completion of all of the subcontractor's work.

2.2.11. **Race-Conscious measure or program**. A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

2.2.12. **Race-Neutral measure or program**. A measure or program that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender – neutrality.

2.2.13. **Schedule of Values**. A detailed **schedule** apportioning the subcontract sum among all portions of the work. Each Schedule of Values shall include a description of the work that will be performed, applicable NAICS codes, estimated quantities, unit prices, the total value of the applicable subcontract and break down of the major work activities to support each DBE contract or DBE contract revision.

2.2.14. **Texas Unified Certification Program (TUCP) Directory**. An online directory listing all DBEs currently certified by the TUCP. The Directory identifies DBE firms whose participation on the Design-Build Contract may be counted toward achievement of the assigned DBE goal.

2.3. **DB Contractor's Responsibilities**.

2.3.1. **DBE Liaison Officer**. The DB Contractor shall designate a DBE liaison officer who will administer the DB Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs

2.3.2. **Compliance Monitoring and Tracking System**. This Design-Build Contract is subject to the Department's electronic contract compliance monitoring and tracking system (CMTS). The DB Contractor, DBEs and non DBEs (only if they are in a tiered relationship with a DBE) are required to provide any noted and requested contract compliance-related data in the Department's CMTS, which is accessible at https:/txdot.txdotcms.com/. Such data includes commitments, terminations, payments, substitutions, and evidence of Good Faith Efforts. The DB Contractor and the applicable DBEs are responsible for responding by any noted response date or due date to any Department instructions or requests for information, and checking the Department's CMTS on a regular basis. The DB Contractor is responsible for ensuring all DBEs have completed all requested items and that their contact information is accurate and up-to-date. The Department may require additional information related to the Design-Build Contract to be provided electronically through the Department's CMTS at any time before, during or after award of the Design-Build Contract.

In its sole discretion, the Department may require that contract compliance tracking data be submitted by the DB Contractor and DBEs in an alternative format prescribed by the Department.

2.3.3. DBE Performance Plan. The DB Contractor shall, in consultation with the Department, develop and submit a DBE Performance Plan describing the methods to be employed for achieving the DBE goals for the Design-Build Contract, including DB Contractor's exercise of Good Faith Efforts. Each DBE Performance Plan must at a minimum include the following:

(a) Specific categories of services and work anticipated for DBE participation on the Project;

(b) Schedule for submission of DBE commitment agreements based on the DB Contractor's initial Project schedule and any subsequent revised Project schedule;

(c) A description of the Good Faith Efforts performed prior to the date of execution of the Design-Build Contract;

(d) A description of the Good Faith Efforts that will be exercised by the DB Contractor following execution of the Design-Build Contract to achieve the DBE goal for the Project; and

(e) The name, qualifications, responsibilities and contact information for the DBE Liaison Officer.

The DB Contractor shall update the DBE Performance Plan quarterly or more frequently as requested by the Department.

2.3.4. **DBE Contractor**. If the DB Contractor is a DBE, the DB Contractor may receive credit toward the DBE goal for work performed by its own forces and work subcontracted to DBEs. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. In the event a DBE subcontracts to a non-DBE, that information must be reported to the Department monthly.

2.3.5. **DBE Commitment**. Only those DBEs certified by the TUCP are eligible to be used for DBE goal attainment. The Department maintains the TUCP DBE Directory at the following Internet address: https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?TN=txdot&XID=2340.

DB Contractor shall submit completed forms ADP-4901 DBE Program Commitment Agreement form for Alternative Delivery Projects, ADP-4901-MS DBE Program Material Supplier Commitment Agreement Form for Alternative Delivery Projects and ADP-4901-T DBE Program Trucking Commitment Agreement Form for Alternative Delivery Projects as appropriate. A DBE must be certified on the day the DBE commitment is considered by the Department and at time of subcontract execution. It is the DB Contractor's responsibility to ensure firms identified for participation are certified DBE firms and certified with the NAICS code applicable to the kind of work the DBE will be performing on the Project. The DB Contractor is responsible for ensuring that all submittals are accurate. Any and all omissions, deletions and/or errors that may affect the DBE commitment are the sole liabilities of the DB Contractor.

DBE commitments in excess of the DBE goal are considered Race-Neutral commitments.

If the DBE goal has not been met and the DB Contractor has used DBE subcontractors without committing to them, this participation would be counted as Race Neutral (RN). Additionally, if the DBE goal is not achieved by the Race Conscious (RC) subcontractors, the Race Neutral (RN) participation can neither be counted towards the DBE project goal nor considered as a GFE to achieve the DBE project goal.

For all DBE subcontracts including all tiered DBE subcontracts, submit a copy of the executed subcontract agreement.

2.3.6. **Good Faith Effort Requirements**. If the DB Contractor cannot meet the DBE goal, in whole or in part, the DB Contractor must make adequate Good Faith Efforts to obtain DBE participation, as determined by the Department.

2.4. **Administrative Reconsideration**. If the Department determines that the DB Contractor has failed to satisfy the good faith efforts requirement, the Department will notify the DB Contractor of the failure and will give the DB Contractor an opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

The DB Contractor must request an administrative reconsideration of that determination within 3 days of the date of receipt of the notice. The request must be submitted directly to the Texas Department of Transportation, Civil Rights Division, 125 East 11th Street, Austin, Texas 78701-2483.

If a request for administrative reconsideration is not filed within the period specified, the determination made is final and further administrative appeal is barred.

If a reconsideration request is timely received, the reconsideration decision will be made by the Department's DBE liaison officer or, if the DBE liaison officer took part in the original determination, the Department's executive director will appoint a department employee to perform the administrative

reconsideration. The employee will hold a senior leadership position and will report directly to the executive director.

The meeting or written documentation must be provided or held within 7 days of the date the request was submitted.

The Department will provide to the DB Contractor a written decision if the DB Contractor did or did not make adequate good faith efforts to meet the contract goal. The reconsideration decision is final and is not administratively appealed to DOT.

2.5. **Determination of DBE Participation**. The work performed by a DBE must be reasonably construed to be included in the work area and NAICS work code identified by the DB Contractor in the approved DBE commitment.

Participation by a DBE will not be counted toward the DBE goal unless (a) a DBE commitment was submitted to the Department prior to the committed DBE commencing work on the project (b) the DBE was certified as a DBE before the execution of the subcontract, (c) the DBE performed a Commercially Useful Function and (d) the amount of the participation has been paid to the DBE.

You may only count the credit towards a RC goal after a commitment is provided. You may only count payments to a DBE as RN before the commitment is submitted, but once a commitment is submitted, then the payments may count as RC moving forward (not retroactive).

The DBE must perform at least 30% of the work with its own forces if the work is to be counted toward the DBE goal. The total amount paid to a DBE for work performed with its own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its subcontract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBE's subcontractor is a DBE.

DBE goal credit for the DBE subcontractors' leasing of equipment or purchasing of supplies from the DB Contractor, Prime contractor or its affiliates is not allowed. Project materials or supplies acquired from an affiliate of the DB Contractor cannot directly or indirectly (second or lower tier subcontractor) be used for DBE goal credit.

If a DBE firm is declared ineligible due to DBE decertification after the execution of such DBE's subcontract, the firm may complete the work, and the firm's participation will be counted toward the DBE goal. If a DBE firm is decertified before such firm has signed a subcontract, the DB Contractor is obligated to replace the ineligible firm with a DBE or demonstrate that it has made Good Faith Efforts to do so.

The DB Contractor may count 100% of its expenditure to a DBE manufacturer toward the DBE goal. Pursuant to 49 CFR 26.55(e)(1)(i), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the Design-Build Contract and of the general character described by the specifications.

The DB Contractor may count only 60% of its expenditure to a DBE regular dealer toward the DBE goal. Pursuant to 49 CFR 26.55(e)(2)(i), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the Design-Build Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Long term leases with logistics

companies that provide transportation services (logistics, equipment and drivers) do not meet the regulatory dealer intent for goal credit as a bulk regular dealer; however, the transaction fees may be counted as goal credit. Packagers, brokers, manufactures representatives, or other persons who arrange or expedite transactions are not regular dealers.

With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, the DB Contractor may count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site toward the DBE goal.

With respect to trucking, the DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

In order to perform a CUF, the DBE trucking firm must own and operate at least one fully licensed, insured and operational truck used on the Design-Build Contract. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE that leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Design-Build Contract.

The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases only trucks from a non-DBE and supplies their own fully employed drivers receives credit for the total value of the transportation services the lessee provides on the Design-Build Contract.

The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives DBE goal credit only for the fee or commission the DBE receives as a result of the lease arrangement.

A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

The DB Contractor may count toward the DBE goal the portion of the total value of the Design-Build Contract amount paid to a DBE Joint Venture equal to the distinct, clearly defined portion of the work of the Design-Build Contract performed by the DBE.

2.6. **Commercially Useful Function**. The DB Contractor shall ensure that each DBE used to perform the work of the Design-Build Contract performs a CUF. The Department will monitor performance during the Design-Build Contract to confirm that each DBE is performing a CUF.

With respect to material and supplies used on the Design-Build Contract, in order to perform a CUF, a DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.

A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. The Department will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.

If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a CUF.

If the Department determines that a DBE is not performing a CUF, no work performed by such DBE will count as eligible DBE participation. The Department may make such determination at any time.

In case of the denial of credit for non-performance of a CUF by a DBE, the DB Contractor will be required to provide a substitute DBE to meet the DBE goal or provide an adequate Good Faith Effort when applicable.

2.6.1. **Rebuttal of a Finding of No Commercially Useful Function**. Consistent with the provisions of 49 CFR 26.55(c)(4)&(5), before Department makes a final finding that no CUF has been performed by a DBE, the Department will notify the DBE and provide the DBE the opportunity to provide rebuttal information.

CUF determinations are not subject to administrative appeal to the DOT.

2.6.2. **Joint Check**. The use of joint checks between a DB Contractor and a DBE is allowed with Department approval. Joint checks will not be allowed simply for the convenience of the DB Contractor. To obtain approval, the DB Contractor must submit a completed Form 2178, "DBE Joint Check Approval," to the Department.

The Department will closely monitor the use of joint checks to ensure that such a practice does not erode the independence of the DBE nor inhibit the DBE's ability to perform a CUF. When joint checks are utilized, DBE credit toward the DBE goal will be allowed only when the subcontractor is performing a CUF in accordance with 49 CFR 26.55(c)(1).

Long-term or open-ended joint checking arrangements may be a basis for further scrutiny by the Department and may result in the Department's determination of a lack of participation towards the DBE goal if DBE independence cannot be established.

If the proper procedures are not followed or the Department determines that the arrangements result in a lack of independence for the DBE involved, no credit for the DBE's participation as it relates to the material cost will be used toward the DBE goal, and the DB Contractor shall be required to make up the difference elsewhere on the Project.

2.7. **DBE Termination and Substitution**. No DBE named in the DBE commitment will be terminated for convenience, in whole or part, without the Department's approval. This includes, but is not limited to, instances in which the DB Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm or another DBE firm.

Unless the Department's consent is provided, the DB Contractor will not be entitled to any payment for work or material allocated to the DBE in the DBE commitment unless it is performed or supplied by the listed DBE.

In order to terminate a DBE for cause, the DB Contractor must first give written notice to the DBE of its intent to terminate for cause and the reason for the termination. The DB Contractor will copy the Department on such notice of intent to terminate.

The notice of intent to terminate for cause must provide the DBE five (5) calendar days to respond to the DB Contractor's notice, which response must advise the DB Contractor and the Department of the reasons, if

any, why the DBE objects to the proposed termination of its subcontract and why the Department should not approve the DB Contractor's request for termination. If directed by the Department, the notice of intent to terminate may require a response time shorter than (5) days by the DBE if required as a matter of public necessity.

The Department will consider both the DB Contractor's request and DBE's stated position prior to approving the request to terminate. The Department may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the DB Contractor has good cause to terminate the DBE. If the Department does not approve the request, the DB Contractor must continue to use the committed DBE in accordance with the Design-Build Contract. For guidance on what good cause includes, see 49 CFR 26.53.

Good cause does not exist if the DB Contractor seeks to terminate, reduce or substitute a DBE so that the DB Contractor can self-perform the work for which the DBE was engaged.

When a DBE is terminated, the DB Contractor must make Good Faith Efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established DBE goal, the work that the original DBE was to have performed under the Design-Build Contract.

Upon termination of a DBE, the DB Contractor will submit Good Faith Effort documentation to find and secure substitute DBE and must enter associated DBE Termination and Substitution data into the Department's CMTS within seven (7) days, which deadline may be extended for an additional seven (7) days if necessary at the request of the DB Contractor. The Department will provide a written determination to the DB Contractor stating whether or not Good Faith Efforts have been demonstrated. If the Department determines that Good Faith Efforts were not demonstrated, the DB Contractor will have the opportunity to appeal the determination via Administrative Reconsideration.

2.8. **Reports and Records**. The DB Contractor shall promptly provide all information required in the Department's CMTS with respect to any payments made to DBEs. By the 15th of each month and after Work begins, the DB Contractor must report payments in the Department's CMTS (a) to meet the DBE goal and (b) DBE Race Neutral participation toward Race-Neutral measure or program. These payment entries are required until all DBE subcontracting or material supply activity is completed. Zero payment entries are required when no activity has occurred in a monthly period. All such reports must be entered in the Department's CMTS.

DBE forms required for this DB Contract may be found on the Department's website: http://www.txdot.gov/business/resources/doing-business/dbe-forms.html.

On a quarterly basis, DB Contractor must submit to the Department a report setting forth the status of DB Contractor's Good Faith Efforts to satisfy the DBE goal and an updated DBE Performance Plan describing the DB Contractor's plan to solicit additional DBE firms to satisfy such DBE goal.

The DB Contractor shall notify the Department's Project Manager (or such other individual as may be designated by the Department) utilizing the Departments CMTS if payment to any DBE subcontractor is withheld or reduced for Department acceptance. See Section 9.8 of these General Conditions (Payment to Subcontractors) for additional information.

As a condition to receipt of the final payment for the work from the Department, the DB Contractor must indicate a final payment in the Department's CMTS. Such final payment indication includes a summary of all payments made to the DBEs on the Project.

The DB Contractor shall retain all records for a period of three (3) years following completion of the Work. Such records must be available at reasonable times and places for inspection by authorized representatives of Department or the DOT. The DB Contractor shall provide copies of subcontracts or agreements and other documentation upon request by the Department or the DOT.

2.9. **Failure to Comply**. The DB Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Design-Build Contract. In such a case, the Department reserves the right (a) to terminate the Design-Build Contract, (b) to deduct the amount of the DBE goal not accomplished by DBEs from the compensation due or to become due the DB Contractor, (c) to secure a refund of the amount paid by the Department for the DBE goal not accomplished by DBEs, not as a penalty but as liquidated damages, or (d) such other remedy or remedies as the Department deems appropriate.

2.10. **Investigations**. The Department may conduct reviews or investigations of participants as necessary. All participants are required to cooperate fully and promptly with compliance reviews, investigations and other requests for information.

2.11. **Falsification and Misrepresentation**. If the Department determines that the DB Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by the Department to be unallowable, or if the DB Contractor engages in repeated violations, falsification, or misrepresentation, the Department may:

(a) refuse to count any fraudulent or misrepresented DBE participation toward the DBE goal;

(b) withhold progress payments to the DB Contractor commensurate with the violation;

(c) refer the matter to the Office of Inspector General of the DOT for investigation; and/or

(d) seek any other available contractual remedy.