

STATE OF SOUTH DAKOTA  
SAFE ROUTES TO SCHOOL AGREEMENT  
BETWEEN  
SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION,  
CITY OF RAPID CITY,  
AND  
RAPID CITY AREA SCHOOL DISTRICT

THIS AGREEMENT is made and entered into this 3 day of February, 2011, by and among the State of South Dakota, acting by and through its Department of Transportation, hereinafter referred to as the "STATE"; the City of Rapid City, South Dakota, hereinafter referred to as the "CITY"; and Rapid City Area School District No. 51-4 of Pennington County, South Dakota, hereinafter referred to as the "SCHOOL DISTRICT";

BACKGROUND:

1. The STATE has determined that project P SRTS (14) PCN 02UA in the City of Rapid City, South Dakota, is an eligible project for funding under the Safe Routes to School Program, hereinafter referred to as "SRTS," created by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); as indicated in Exhibit A, incorporated herein; and
2. The STATE has established SRTS Project Number P SRTS (14) PCN 02UA for the aforesaid project, hereinafter referred to as the "Project," in the amount of One Hundred Forty-three Thousand, Eight Hundred Dollars (\$143,800.00) in infrastructure funding and in the amount of Twenty-four Thousand, Nine Hundred Twenty-five Dollars (\$24,925.00) in non-infrastructure funding, with 100% (one-hundred percent) of said costs coming from Federal Highway funds; and
3. The CITY and the SCHOOL DISTRICT have jointly submitted an application to sponsor the Project and the STATE has accepted said Application. The Application by reference herein is hereby made a part of this Agreement;

NOW, THEREFORE, in consideration of the above premises and in further consideration of the agreements herein set forth by and between the parties hereto, the parties agree as follows:

I. THE STATE'S DUTIES AND RESPONSIBILITIES:

- A. The STATE shall review the Project engineering plans, environmental documents, and contract documents applicable to the Federal Highway Administration and State of South Dakota requirements for a federally funded project and submit appropriate documentation to the Federal Highway Administration to receive Federal approval.
- B. The STATE shall, upon receipt and approval of properly documented invoices, pay to the CITY 100% (one-hundred percent) of the total reimbursable costs for infrastructure work after the invoices have been certified by the CITY as properly representing work that has been completed and paid for by the CITY. The STATE shall withhold 10% (ten percent) of the CITY'S total Project costs until the Project has been inspected and approved by the STATE and all surveys have been completed as required.
- C. The STATE shall, upon receipt and approval of properly documented invoices, pay to the SCHOOL DISTRICT 100% (one-hundred percent) of the total reimbursable costs for non-infrastructure work after the invoices have been certified by the SCHOOL DISTRICT as properly representing work that has been completed and paid for by the SCHOOL DISTRICT. The STATE shall withhold 10% (ten percent) of the SCHOOL DISTRICT'S total Project costs until the Project has been approved by the STATE and all surveys have been completed as required.
- D. The STATE shall use the STATE'S best efforts to obtain Federal Highway Administration authorization of the Project.
- E. The STATE shall issue a Notice to Proceed letter to the CITY and the SCHOOL DISTRICT upon execution of the Agreement and receipt of federal authorization of the Project.

## II. THE CITY'S DUTIES AND RESPONSIBILITIES:

- A. The CITY shall manage the design, environmental study, right-of-way acquisition, and construction of the infrastructure Project. The CITY shall prepare the Project plans, specifications, and estimates for the STATE'S review and approval. Upon receipt of written approval by the STATE, the CITY shall advertise the Project for bids. The CITY shall advertise the Project for three (3) weeks prior to the letting date. The CITY shall recommend award of the Project to lowest responsible bidder, and shall provide the STATE with copies of all bid tabulations, proof of advertisement, and the recommendation of award.
- B. The CITY shall not enter into any agreement with a construction contractor until the CITY receives written notice from the STATE that the Federal Highway Administration has authorized the Project.
- C. The CITY shall not enter into any agreement with an engineering and environmental consultant for which costs the CITY intends to be reimbursed, until the CITY receives written notice from the STATE that the Federal Highway Administration has authorized the Project. All subcontracts for engineering and engineering-related work need to comply with the provisions of 23 CFR Part 172 and 49 CFR Part 18.36. Allowable costs need to be determined in accordance with 48 CFR Part 31.

Any consultant must be selected through a formal competitive process. The Local Government must either select a consultant through a competitive request for proposals process, or use a qualified consultant off of the STATE consultant retainer list.

- D. The CITY shall provide, or cause to be provided, both the maintenance of the infrastructure Project during construction and, once the work under this Agreement is completed, subsequent maintenance of all Project elements, together with the maintenance of sidewalks, which includes replacement of sidewalks and curb ramps, including detectable warnings, in accordance with the Americans with Disabilities Act; and winter snow and ice removal, in accordance with the CITY'S policy and practices. If operational adjustments become necessary, the CITY agrees that no changes will be made without the STATE and Federal Highway Administration's prior approval.
- E. The CITY shall submit invoices to the STATE for 100% (one-hundred percent) of the approved amounts paid to engineering, environmental, and right-of-way consultants and construction contractors for the performance of infrastructure work set forth in **Exhibit A**, attached hereto and hereby made a part of this Agreement. The invoice structure shall include details of work completed consistent with **Exhibit A**, as well as backup information to support the charges. The CITY shall certify that the invoices properly represent payment for work that has been completed and paid for by the CITY. The STATE shall withhold 10% (ten percent) of the total cost until the Project has been inspected and approved by the STATE and all surveys have been completed as required. The CITY shall be 100% (one hundred percent) responsible for any costs above the approved amounts.
- F. The CITY shall insert a copy of the Special Provision for Disadvantaged Business Enterprise (DBE) in accordance with 49 CFR Part 26 and either form 289R/N or 289R/C indicating the contractor's commitment to use DBE'S certified by the STATE and included in the DBE Directory on the STATE'S website. The form to be inserted will be determined by the potential to subcontract work to DBE'S based on the type of work to be performed. The Special Provision and forms 289R/N and 289R/C can be obtained through the South Dakota Department of Transportation DBE Compliance Officer (605-773-4906).

After physical completion of the contract, the contractor must complete form DOT 289 (Certification of DBE Payments) to the CITY showing payments to all DBE's indicated on either form 289R/N or 289R/C. An example of the form is attached hereto as **Exhibit C** and hereby made a part of this Agreement.

- G. The CITY shall comply with the provisions of the Davis Bacon Act and related acts contained in 29 CFR 1, 3, and 5. The CITY shall insert a copy of the required provisions of the Davis-Bacon Act in accordance with 29 CFR 5.5 in all construction contracts exceeding Two Thousand Dollars (\$2,000) and to all related subcontracts, except for projects located on roadways classified as local roads or

rural minor collectors, which are exempt. The form to be inserted can be obtained through the South Dakota Department of Transportation Labor Law Officer (605-773-3795).

- H. If there is a default of any nature to this Agreement, the CITY shall be required to reimburse the STATE and the Federal Highway Trust Fund for all funds expended under the Project.
- I. The CITY may invoice the STATE for incurred costs on a monthly basis and the STATE will process these invoices for payment within thirty (30) days of receipt.

### III. THE SCHOOL DISTRICT'S DUTIES AND RESPONSIBILITIES:

- A. The SCHOOL DISTRICT shall manage the non-infrastructure activities of the Project as indicated in Exhibit A.
- B. The SCHOOL DISTRICT shall submit invoices to the STATE for 100% (one-hundred percent) of the approved amounts paid for non-infrastructure projects as set forth in the Application. The SCHOOL DISTRICT shall be 100% (one hundred percent) responsible for any costs above the approved amounts. The invoice structure shall include details of work completed consistent with the Scope of Work as defined in Exhibit A, as well as backup information to support the charges. The SCHOOL DISTRICT shall certify that the invoices properly represent payment for work that has been completed and paid for by the SCHOOL DISTRICT. The STATE shall withhold 10% (ten percent) of the total cost until the Project has been approved by the STATE and all surveys have been completed as required.
- C. The SCHOOL DISTRICT may invoice the STATE for incurred costs on a monthly basis and the STATE will process said invoices for payment within thirty (30) days of receipt.

### IV. THE CITY AND THE SCHOOL DISTRICT MUTUALLY AGREE TO:

- A. Commence the Project within nine (9) months after the date of the Notice to Proceed and complete the Project within two (2) years after the date of the Notice to Proceed, unless earlier terminated as provided herein. The CITY and the SCHOOL DISTRICT may apply to the STATE for an extension no later than thirty (30) days prior to the termination date of this Agreement. Failure to meet either deadline without good cause may cancel the STATE'S participation in the Project at the STATE'S discretion. Any remaining funds will be forfeited. The CITY and the SCHOOL DISTRICT are responsible for informing the STATE if any condition arises that may result in either deadline being unattainable.
- B. Indemnify and hold the STATE, its officers, agents, and employees harmless from and against any and all actions, suits, damages, liability, or other proceedings that arise as a result of the CITY'S and the SCHOOL DISTRICT'S performance under this Agreement. This section does not require the CITY or the SCHOOL DISTRICT to be responsible for or defend against claims or damages arising from errors or omissions of the STATE, its officers, agents or employees.
- C. Make payments to the contractors, suppliers, and vendors, and seek reimbursement from the STATE.
- D. Obtain approval from the STATE before authorizing any changes to the Project work under the STATE approved Project plans and specifications.
- E. Comply with all federal, state, and local laws, together with all ordinances and regulations applicable to the work and will be solely responsible for obtaining current information on such requirements. The CITY and the SCHOOL DISTRICT shall procure all licenses, permits, or other rights necessary for the fulfillment of their obligations under the Agreement. The CITY'S and the SCHOOL DISTRICT'S failure to comply will be cause for the STATE to withhold participation and reimbursement.
- F. Pay the prime contractor or suppliers within fifteen (15) days of receiving payment for work that is submitted for to the STATE for progress payment. If the CITY or the SCHOOL DISTRICT withholds

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payment beyond this time period, written justification by the CITY or the SCHOOL DISTRICT shall be submitted to the STATE upon request. If it is determined that a prime contractor or supplier has not received payment due without just cause, the STATE may withhold future estimated payments and may direct the CITY or the SCHOOL DISTRICT to make such payment to the prime contractor or supplier. Prompt payment deviations will be subject to price adjustments.

- G. Stipulate that any facility to be utilized in the performance of this Agreement, under the Clean Air Act, as amended, Executive Order 11738, and regulations in implementation thereof is not listed on the U.S. Environmental Protection Agency List of Violating Facilities pursuant to 40 CFR 15.20. The CITY and the SCHOOL DISTRICT shall promptly notify the STATE of the CITY and the SCHOOL DISTRICT'S receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.
- H. Not use subcontractors to perform the services described herein without the STATE'S prior written consent. The CITY and the SCHOOL DISTRICT will include provisions in their subcontracts requiring their subcontractors to comply with the applicable provisions of the Agreement, to indemnify the STATE, and to provide insurance coverage for the benefit of the STATE in a manner consistent with this Agreement. The CITY and the SCHOOL DISTRICT will cause their subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. All subcontracts for construction will contain the required contract provisions detailed in form FHWA-1273. An example of form FHWA-1273 is attached hereto as **Exhibit D** and hereby made a part of this Agreement.
- I. Not allow the CITY'S or the SCHOOL DISTRICT'S prime contractor to use subcontractors to perform the services described herein without the STATE'S prior written consent. The CITY and the SCHOOL DISTRICT will ensure that the prime contractor include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the STATE, and to provide insurance coverage for the benefit of the STATE in a manner consistent with this Agreement. The CITY and the SCHOOL DISTRICT will cause their prime contractors, subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits, and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.
- J. Warrant that the CITY and the SCHOOL DISTRICT have not employed or retained any company or person, other than a bona fide employee working solely for the CITY or the SCHOOL DISTRICT, to solicit or secure the Agreement, and that the CITY or the SCHOOL DISTRICT have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the CITY or the SCHOOL DISTRICT, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the STATE shall have the right to annul the Agreement without liability, or, in the CITY'S and the SCHOOL DISTRICT'S discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- K. Agree to be bound by **Exhibit B**, attached hereto and hereby made a part of this Agreement by reference thereto, said assurance being entitled, "Standard Title VI Assurance."
- L. Provide services in compliance with the Americans with Disabilities Act of 1990, and any amendments thereto.
- M. Report to the STATE any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject the CITY, the SCHOOL DISTRICT, or the STATE, its officers, agents, or employees to liability. The CITY and the SCHOOL DISTRICT shall report any such event to the STATE immediately upon discovery.

The CITY and the SCHOOL DISTRICT'S obligation under this section shall only be to report the occurrence of any event to the STATE and to make any other report provided for by their duty or

applicable law. The CITY and the CONSULTANT'S obligation to report shall not require disclosure of any information subject to privilege or confidentiality under (e.g., attorney-client communications). Reporting to the STATE under this section shall not excuse or satisfy any obligation of the CITY and the SCHOOL DISTRICT to report any event to law enforcement or other entities under the requirements of any applicable law.

- N. All project charges will be subject to audit in accordance with the STATE'S current procedures and U. S. Office of Management and Budget (OMB) Circular A-133. The CFDA Number for these funds is 20.205. Allowable costs will be determined in accordance with 49 CFR 18.22.

The CITY and the SCHOOL DISTRICT shall maintain accurate cost accounting systems for all costs incurred under this Agreement and clearly identified with activities performed under this Agreement.

Upon reasonable notice, the CITY and the SCHOOL DISTRICT shall allow the STATE, through any authorized representative to have access to and the right to examine and copy all records, books, papers, or documents related to services rendered under this Agreement. These records shall be clearly identified and readily accessible. All records shall be kept for a period of three (3) years after the date final payment under this Agreement is made and all other pending matters are closed.

If the CITY or the SCHOOL DISTRICT expend \$500,000 or more in federal funds during any CITY or SCHOOL DISTRICT fiscal year covered, in whole or in part, under this Agreement, then the CITY or the SCHOOL DISTRICT shall be subject to the single agency audit requirements of the US Office of Management and Budget (OMB) Circular A-133. If the CITY or the SCHOOL DISTRICT expend less than \$500,000 during any CITY or SCHOOL DISTRICT fiscal year, the STATE may perform a more limited program or performance audit related to the completion of Agreement objectives, the eligibility of services or costs and adherence to Agreement provisions.

The CITY and the SCHOOL DISTRICT will include the provisions of IV. N in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto.

**V. THE PARTIES FURTHER UNDERSTAND AND MUTUALLY AGREE AS FOLLOWS:**

- A. Neither the STATE nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the CITY or the SCHOOL DISTRICT under this Agreement prior to the date of the STATE'S written Notice to Proceed.
- B. The maximum amount of funds available for the Project for reimbursement under this Agreement from the STATE shall be One Hundred Sixty-eight Thousand, Seven Hundred Twenty-five Dollars (\$168,725.00). Neither the STATE nor the Federal Highway Administration will be responsible for any expenses or costs incurred by the CITY or the SCHOOL DISTRICT under this Agreement in excess of the above amounts.
- C. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement may be terminated by the STATE. Termination for any of these reasons is not a default by the STATE nor does it give rise to a claim against the STATE.
- D. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
- E. All other prior discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.
- F. This Agreement can be terminated upon thirty (30) days' written notice by any of the parties. In the event the CITY or the SCHOOL DISTRICT breaches any of the terms or conditions hereof, this

Agreement may be terminated by the STATE at any time with or without notice. If termination for such a default is effected by the STATE, any payments due to the CITY and the SCHOOL DISTRICT at the time of termination may be adjusted to cover any additional costs to the STATE due to the CITY'S or the SCHOOL DISTRICT'S default. If after the STATE terminates for a default by the CITY or the SCHOOL DISTRICT it is determined the CITY and the SCHOOL DISTRICT were not at fault, then the CITY and the SCHOOL DISTRICT shall be paid for eligible services rendered and expenses incurred up to the date of termination.

- G. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- H. This Agreement may not be amended, except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.
- I. Neither this Agreement nor any interest therein shall be assigned, sublet, or transferred unless written permission to do so is granted by the STATE.
- J. In the event the Agreement is terminated by the STATE for fault on the part of the CITY or the SCHOOL DISTRICT, the Agreement shall be null and void, and the STATE shall be entitled to recover payments made to the CITY or the SCHOOL DISTRICT on work which is the cause of the at-fault termination.
- K. Any dispute between the parties hereto concerning this Agreement shall be referred to the Secretary of the South Dakota Department of Transportation or duly authorized representative for determination, whose decision in the matter shall be final and conclusive on the parties to this Agreement.
- L. The CITY and the SCHOOL DISTRICT certify, by signing this Agreement, that neither them nor their principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- M. The CITY and the SCHOOL DISTRICT certify, to the best of the CITY'S and the SCHOOL DISTRICT'S knowledge and belief, that: No Federal appropriated funds have been paid or will be paid, by or on behalf of the CITY and the SCHOOL DISTRICT, to any person for influencing or attempting to influence an officer or employee of any 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 a Federal contract, grant, loan, or cooperative Agreement. If any funds other than Federal appropriated funds have been paid or will be paid to any of the above mentioned parties, the CITY and the SCHOOL DISTRICT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The CITY and the SCHOOL DISTRICT shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontract, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. 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 section 1352, title 31, U.S. Code. 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.

- N. The CITY has designated its Mayor as the CITY'S authorized representative and has empowered the Mayor with the authority to sign this Agreement on behalf of the CITY. A copy of the CITY'S Commission minutes or resolution authorizing the execution of this Agreement by the CITY'S authorized representative is attached hereto as **Exhibit E**.
- O. The SCHOOL DISTRICT has designated its School Board President as the SCHOOL DISTRICT'S authorized representative and has empowered the School Board President with the authority to sign

this Agreement on behalf of the SCHOOL DISTRICT. A copy of the SCHOOL DISTRICT'S School Board Meeting minutes or resolution authorizing the execution of this Agreement by the SCHOOL DISTRICT'S authorized representative is attached hereto has Exhibit F.

The CITY, the SCHOOL DISTRICT, and the STATE, by signing this Agreement, evidence authority to enter into this Agreement through formal action of their governing bodies.

City of Rapid City, South Dakota

State of South Dakota  
Department of Transportation

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

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

Its: Mayor

Its: Project Development Engineer

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

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

Attest:

Approved as to Form:

\_\_\_\_\_  
City Auditor/Clerk

  
\_\_\_\_\_  
Special Assistant Attorney General

(City Seal)

Rapid City Area School District No. 51-4  
of Pennington County, South Dakota

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

Its: School Board President

Date: 2-3-11

Attest:

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

Its: Business Manager

## Meadowbrook FY2011 Non-Infrastructure Funding

| Non-Infrastructure Items                  | Quantity | Unit | Unit Price | Amount          |
|---|----------|------|------------|-----------------|
| <b>EDUCATION</b>                          |          |      |            |                 |
| Promote Walk to School Day                | 1        |      | \$1,000    | \$1,000         |
| PE Class Handouts                         | 575      | EA   | \$3        | \$1,725         |
| Pedometers and Recording Sheets           | 575      | EA   | \$6        | \$3,450         |
| Parents Handouts                          | 575      | EA   | \$3        | \$1,725         |
| Bike Rodeo Materials                      | 575      | EA   | \$3        | \$1,725         |
| <b>ENCOURAGEMENT</b>                      |          |      |            |                 |
| Bike                                      | 2        | EA   | \$300      | \$600           |
| Cargo Trailer                             | 2        | EA   | \$400      | \$800           |
| Give-Away's K-5 (stickers, water bottles) | 575      | EA   | \$2        | \$1,150         |
| Printings of Banners and Flyers           | 1        |      | \$2,500    | \$2,500         |
| Advertisement in Local Paper              | 1        |      | 500        | \$500           |
| Incentives                                | 250      | EA   | \$7        | \$1,750         |
| <b>ENFORCEMENT</b>                        |          |      |            |                 |
| Crossing Guard                            | 2        | Year | \$4,000    | \$8,000         |
| <b>TOTAL</b>                              |          |      |            | <b>\$24,925</b> |

## Meadowbrook FY2011 Infrastructure Funding

| Infrastructure Items             | Quantity | Unit        | Unit Price | Amount           |
|----------------------------------|----------|-------------|------------|------------------|
| <b>Tomahawk/Arrowhead</b>        |          |             |            |                  |
| Beacons                          | 4        | Unit        | \$4,000    | \$16,000         |
| Speed Display Signs              | 2        | Unit        | \$4,000    | \$8,000          |
| Crosswalk                        | 2        |             | \$200      | \$400            |
| School Zone and Pedestrian Xing  | 12       | Sign        | \$100      | \$1,200          |
| <b>Sheridan Lake/Flormann</b>    |          |             |            |                  |
| Speed Display Signs              | 2        | Unit        | \$4,000    | \$8,000          |
| Count Down Ped Signals           | 6        | Unit        | \$200      | \$1,200          |
| <b>Flormann</b>                  |          |             |            |                  |
| Beacons                          | 1        | Unit        | \$4,000    | \$4,000          |
| <b>Arrowhead to School</b>       |          |             |            |                  |
| Sidewalk                         | 400      | Lineal Feet | \$25       | \$10,000         |
| <b>Various Intersections (9)</b> |          |             |            |                  |
| H/C Ramps                        | 72       | Ramp        | \$1,250    | \$90,000         |
| Contingency                      |          |             |            | \$5,000          |
| <b>Total</b>                     |          |             |            | <b>\$143,800</b> |
| <b>Combined Totals</b>           |          |             |            | <b>\$168,725</b> |



- Site 1: Arrowhead Drive and Tomahawk Drive, install a total of 3 curb cut/ADA ramps. Install concrete pans and fillets as necessary to achieve acceptable cross slopes and grade. Install 1" "low visibility" cross walk with cold plastic pavement markings.
- Site 2: Stirling Street and West Flormann Street, install a total of 2 curb cut/ADA ramps. Remove existing sidewalk that does not tie to ADA ramps.
- Site 3: Cruz Drive and West Flormann Street, install a total of 2 curb cut/ADA ramps. Remove sidewalk that does not tie to ADA ramp.
- Site 4: Mountain View Drive and West Flormann Street, install a total of 2 curb/ADA ramps. Remove sidewalk that does not tie into ADA ramp. Remove sidewalk that does not tie into ADA ramp.
- Site 5: Alamo Drive and West Flormann Street, install a total of 2 curb cut/ADA ramps. Remove sidewalk that does not tie into ADA ramp. Remove sidewalk that does not tie into ADA ramp.
- Site 6: Buena Vista Drive and West Flormann Street, install a total of 2 curb cut/ADA ramps. Remove sidewalk that does not tie into ADA ramp.
- Site 7: Install 1 curb cut ADA ramp. Install 6 foot wide curbside sidewalk as needed to bridge gaps or in need to repair to Meadowbrook Elementary School property.

\*Budget dependant:

- Site 2 A: Central Boulevard and West Flormann Street correct 3 non-compliant ADA ramps.
- Site 7: Central Boulevard and Lockwood Drive, correct 2 non-compliant ADA ramps.

STATE OF SOUTH DAKOTA  
DEPARTMENT OF TRANSPORTATION  
STANDARD TITLE VI ASSURANCE  
SEPTEMBER 1, 1997

**TITLE VI - NONDISCRIMINATION:**

During the performance of this Agreement, the CITY and the SCHOOL DISTRICT, for themselves, their assignees, and successors in interest (hereinafter collectively referred to as the "PARTIES") agree as follows:

1. Compliance with Regulations: The PARTIES shall comply with the Regulations relative to nondiscrimination in Federally or State assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as it may be amended from time to time (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
2. Nondiscrimination: The PARTIES, with regard to the work performed by the PARTIES during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, disability, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The PARTIES shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the PARTIES for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the PARTIES of the PARTIES' obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, disability, or national origin.
4. Information and Reports: The PARTIES shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Department of Transportation or the Federal Highway Administration to be pertinent to ascertain compliance with such regulations or directives. Where any information required of the PARTIES is in the exclusive possession of another who fails or refuses to furnish this information, the PARTIES shall so certify to the Department of Transportation, or the Federal Highway Administration as appropriate, and shall set forth what efforts were made to obtain the information.
5. Sanctions for Noncompliance: In the event of the PARTIES' noncompliance with the non-discrimination provisions of this Agreement, the Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:
  - a. Withholding of payments to the PARTIES under the Agreement until the PARTIES comply, and/or,
  - b. Cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: The PARTIES shall include the provisions of paragraphs (1) through (5) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The PARTIES shall take such action with respect to any subcontract or procurement as the Department of Transportation or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the PARTIES become involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the PARTIES may request the Department of Transportation to enter into such litigation to protect the interests of the State of South Dakota, and, in addition, the PARTIES may request the United States to enter into such litigation to protect the interests of the United States.

SOUTH DAKOTA DEPARTMENT OF TRANSPORTATION

Certification of DBE Payments

This form is to be completed and filed within 30 days of completion of the project. An original and one copy are to be submitted to the DOT Safe Routes to School Coordinator. The Safe Routes to School Coordinator should retain the original in the project file and forward one copy to Denise Voorhes, DBE Compliance Officer by mail or faxed to 773-6600.

Project Number \_\_\_\_\_ DOT Area \_\_\_\_\_

County(ies) \_\_\_\_\_ PCN \_\_\_\_\_

The undersigned prime contractor on the South Dakota Department of Transportation listed above hereby certifies that payments have been (or will be) made to the DBE firms listed in the amounts shown for work performed or materials furnished under this contract.

| DBE Company<br>(list each DBE separately) | Payments<br>made to date<br>(dollars) | Anticipated<br>remaining<br>payment<br>(dollars) | Total<br>Payments to<br>date plus<br>anticipated |
|---|---------------------------------------|--|--|
| _____                                     | _____                                 | _____  | _____  |
| _____                                     | _____                                 | _____  | _____  |
| _____                                     | _____                                 | _____  | _____  |
| _____                                     | _____                                 | _____  | _____  |

Note: you must attach an explanation if any total payment to a DBE firm is less than 90% of your commitment listed on DOT Form 289 R/C or 289 R/N.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Name of Company Official (print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

REQUIRED CONTRACT PROVISIONS  
FEDERAL-AID CONSTRUCTION CONTRACTS

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**I. GENERAL**

1. 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.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:
  - Section I, paragraph 2;
  - Section IV, paragraphs 1, 2, 3, 4, and 7;
  - Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 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 DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

## II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

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 and 41 CFR 60) 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 Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American 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 State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
  - b. The contractor will accept as his 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, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO 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 minority group employees.
  - 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 minority groups 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 minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group

employees, and establish with such identified sources procedures whereby minority group 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, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
- c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group 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 his 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 his avenues of appeal.

6. **Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- 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. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- 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 minority group and women employees 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 his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. 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 best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
  - b. The contractor will use best 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 SHA 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 minority and women 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 minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) 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 SHA.
- 8. 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.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
  - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
  - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
- 9. 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 completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:
    - (1) The number 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;
    - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
    - (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
  - b. The contractors will submit an annual report to the SHA 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. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. General:

- a. All mechanics and laborers 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 (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) 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. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, 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 paragraphs 4 and 5 of this Section IV.
- b. 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.



- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

## 2. Classification:

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
- (1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - (2) the additional classification is utilized in the area by the construction industry;
  - (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) with respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification 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 DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour 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.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional 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. Said 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.
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

## 3. Payment of Fringe Benefits:

- a. 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 or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a 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.

#### 4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

##### a. Apprentices:

- (1) 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 DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/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 Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- (2) The allowable ratio of apprentices to journeyman-level employees 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 employee 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 listed in 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 or subcontractor 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-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- (3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level 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 for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- (4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

##### b. Trainees:

- (1) 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 DOL, Employment and Training Administration.
- (2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. 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.
- (3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level 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-level

wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

- (4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor 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. **Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

**5. 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.

**6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor 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, as 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 SHA contracting officer 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.

**7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**8. Violation:**

**Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

## 9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

## V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### 1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### 2. Payrolls and Payroll Records:

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof 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. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found 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 and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
  - (1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

- (2) that such 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 the Regulations, 29 CFR 3;
  - (3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. 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 2d of this Section V.
  - f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
  - g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, 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 SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions 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.

#### VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
  - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
  - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
  - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

#### VII. SUBLETTING OR ASSIGNING THE CONTRACT

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 State. 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).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly 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, assignee, or agent of the prime contractor.

- 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 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 VII 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 SHA 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 SHA 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 SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

#### VIII. SAFETY: ACCIDENT PREVENTION

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 SHA 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. 333).
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. 333).

#### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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, the following notice 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:

#### NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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 not more than \$10,000 or imprisoned not more than 5 years or both."*

#### **X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

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

##### **1. Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary 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 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 primary 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 department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary 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," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary 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 primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. 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.
- 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.

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a 3-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;
  - c. 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 1b of this certification; and



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

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 participation in this transaction 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.

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

(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 his or her bid or proposal that he or she 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.

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