

AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (“City”), and **KIEWIT INFRASTRUCTURE CO.**, a Delaware corporation, doing business at 160 Inverness Drive West, Suite 110, Englewood, CO 80112 (“Contractor”).

RECITALS:

- A. The Parties entered into an Agreement executed on or about October 28, 2015 (the “Agreement”) to provide preconstruction and integrated construction services to deliver selected general public improvement projects to the City; and
- B. The Parties desire to amend the Agreement to allow for construction of the 47th Street Pedestrian Overpass (hereinafter “Overpass Project”) by increasing the Maximum Contract Amount, requiring compliance with CDOT’s Disadvantaged Business Enterprise Program, and adding other federal requirements for the work orders issued for the Overpass Project.

NOW THEREFORE, in consideration of the premises and the Parties’ mutual covenants and obligations, the Parties agree as follows:

1. Section 6.5 of the Agreement entitled “**Maximum Contract Amount**” is amended to read as follows:

“**6.5 Maximum Contract Amount.** The maximum amount of this Contract will be limited to: **One Hundred Fifty-Five Million Dollars and No Cents (\$155,000,000.00)**, unless changed by written amendment.”

The following amended provisions apply only to work orders issued for the Overpass Project:

2. **Defined Terms.** To clarify any inconsistent or incompatible terminology between CDOT, FHWA and the City and County of Denver, please see attached Defined Terms as **Exhibit R**.
3. Section 7.3 of the Agreement entitled “**Compliance with Minority/Women Business Enterprise Requirements**” is replaced with the following for all work orders issued for the Overpass Project, to read as follows:

“**7.3 Compliance with Disadvantaged Business Enterprise Program Requirements.** The following requirements will apply to all work orders issued for the Overpass Project, which shall comply with CDOT’s **Disadvantaged Business Enterprise Program (DBE)** requirements as set forth in attached **Exhibit S**.”

4. **On the Job Training (OJT).** The following Workforce requirements apply to all work orders issued for the Overpass Project only:

OJT is required for all work orders issued for the Overpass Project. CDOT's OJT special provision, attached as **Exhibit T** is a federal requirement, 23 U.S.C, 140(a), to provide equal opportunity and training on federal-aid construction projects. The Contractor shall meet the requirements of the FHWA 1273 attached as **Exhibit U** for all apprentices and trainees. For additional guidance, please look at the OJT Contractor Manual. CDOT will set OJT goals for every federally-assisted project.

5. **Compliance with FHWA 1273 requirements** apply to all work orders issued for the Overpass Project only:

Form FHWA-1273 (**Exhibit U**) must be complied with and physically incorporated in each construction contract funded under Title 23. The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

6. Section 7.4 of the Agreement entitled "**Compliance with Wage Rate Requirements**" is replaced with the following for all work orders issued for the Overpass Project, to read as follows:

7.4 Compliance with Davis Bacon Wage Requirements. The following requirements apply to all work orders issued for the Overpass Project which shall comply with **U.S. DEPT. OF LABOR, DAVIS BACON MINIMUM WAGES** as set forth in **Exhibit V.**

7. Except as herein amended, the Agreement continues in effect, and is affirmed and ratified in each and every particular.

8. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

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EXHIBIT R DEFINED TERMS

<i>CDOT Term</i>	<i>Closest CCD Term</i>	<i>CDOT Definition</i>
<i>Agreement or Contract</i>	Contract	<i>A written standard Construction Manager/General Contractor services agreement entered into by CDOT and the Contractor for the performance of the Work and payment therefore.</i>
<i>Bid Package</i>	Work Order	<i>A substantially complete Plans, Specifications, and Estimate package from which a CAP proposal can be prepared for LLTP or any Construction Phase and that may be advertised through the CDOT low-bid procurement process. In CCD terminology, the Task Order is issued to Kiewit as Integrated Contractor, directing Kiewit to oversee the Work Order.</i>
<i>Construction Agreed Price (CAP)</i>	N/A	<i>The maximum amount for which all Work required for each Construction Phase, excepting LLTP, shall be accomplished (including the CMGC Management Price Percentage).</i>
<i>Contractor or Prime</i>	Contractor or Integrated Contractor (Kiewit)	<i>The individual, joint venture, partnership, or corporation that has been selected by CDOT by virtue of its in-house capabilities of budgeting, cost estimating, management and labor relations personnel, and required technical and professional services expertise to work with CDOT and the Design Consultant in order to help formulate the Project budget; furnish the Design Consultant with the information on construction technology and market conditions to help ensure that the Project design stays within the Project budget, Fixed Limit of Construction Cost, and aggregate of LLTP CAPs and Construction CAPs; and manage the procurement effort.</i>
<i>Independent Cost Estimate</i>	N/A	<i>An estimate that is conducted with the Project design and construction information independent of the Principal Representative, Design Consultant, and Contractor.</i>
<i>Owner's Estimate</i>	N/A	<i>The estimate reviewed and approved by the Principal Representative to be compared to each OPCC or CAP. The Independent Cost Estimate can serve as the Owner's Estimate if approved by the Principal Representative.</i>
<i>Project Manager</i>	Project Manager	<i>A qualified individual authorized by the Contractor to be responsible for coordinating time, equipment, money, tasks, and people for all or specified portions of the Project.</i>
<i>Specifications</i>	Specifications or Standards	<i>The detailed, exact statement of particulars, especially statements prescribing materials and methods and quality of Work for any LLTP or Construction Phase, and include, but are not limited to, Project special provisions and standard special provisions.</i>
<i>Subcontractor</i>	Prime Subcontractor	<i>A person, firm, or corporation supplying labor and materials, or only labor, for all or any portion of the Work, under separate Contract or Agreement with the Contractor. The "Prime Subcontractor" by City definition is the firm selected to perform a Work Order following our competitive process.</i>

EXHIBIT S

July 3, 2017

DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS (LOCAL AGENCY)

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT Local Public Agency construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT Local Public Agency construction projects, and do not use this special provision on projects in a manner other than that specified in the instructions unless such use is first approved by the Standards and Specifications Unit of the Project Development Branch. The instructions for use on CDOT Local Public Agency construction projects appear below.

Instructions for use on Local Public Agency construction projects:

Use this Standard Special Provision on Local Agency administered Federal-Aid Design-Bid-Build Projects. For purposes of this Standard Special Provision, Federal Aid Design Bid Build Projects only include those projects for which the construction portion is funded in whole or in part with federal funds.

Use in conjunction with the Project Special Provision Worksheet, Disadvantaged Business Enterprise (DBE) Contract Goal.

The Local Public Agency should consult with the Regional Civil Rights Office (RCRO) to determine the use of this standard special and to obtain the contract goal. A contract goal of zero still requires the use of this standard special and the worksheet. Local Public Agencies shall not set their own contract goal.

This standard special provision should not be used for CM/GC services, design-build or other innovative projects. For DBE provisions for these projects, contact the Civil Rights and Business Resource Center (CRBRC) at (303)757-9234.

Overview

The Disadvantaged Business Enterprise (DBE) Program is a federally-mandated program that seeks to ensure non-discrimination in the award of U.S. Department of Transportation (DOT)-assisted contracts and to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts. Local Public Agencies (LPAs) that receive federal funds, must comply with CDOT's DBE program. To such end, CDOT sets a contract goal for DBE participation for each DOT-assisted LPA Contract.

In order to be awarded the Contract, the bidder shall show that it has committed to DBE participation sufficient to meet the goal or has otherwise made good faith efforts to do so. CDOT will amend the goal prior to award if the lowest apparent bidder demonstrates that good faith efforts were made but sufficient commitments to meet the goal could not be obtained.

CDOT and the LPA will monitor the progress of the Contractor throughout the project to ensure that the Contractor's DBE commitments are being fulfilled. Modifications to the commitments must be approved by the

CDOT Regional Civil Rights Office (RCRO). CDOT may withhold payment or seek other contractual remedies if the Contractor is not complying with the requirements of this special provision. Upon completion of the Contract, CDOT may require the LPA to reduce the final payment to the Contractor if the Contractor has failed to fulfill the commitments or made good faith efforts to meet the contract goal.

For general assistance regarding the DBE program and compliance, contact CDOT's Civil Rights and Business Resource Center (CRBRC) at (303)757-9234. For project specific issues, contact the LPA Engineer or RCRO.

All forms referenced herein can be found on the CDOT website in the forms library.

1. Contract Assurance

By submitting a proposal for this Contract, the bidder agrees to the following assurance and shall include it verbatim in all (including non-DBE) subcontracts:

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

2. Definitions

Terms not defined herein shall have the meaning provided in the CDOT Standard Specifications for Road and Bridge Construction.

- A. *Commitment.* A commitment is a portion of the Contract, identified by dollar amount and work area, designated by the bidder or Contractor for participation by a particular DBE. Commitments are submitted to CDOT via Form 1414, Anticipated DBE Participation Plan, or via Form 1420, DBE Plan Modification Request. Once approved, commitments are enforceable obligations of the Contract.
- B. *Commercially Useful Function (CUF).* Responsibility for the execution of the work and carrying out such responsibilities by actually performing, managing and supervising the work as further described in Section 8 below.
- C. *Contract Goal.* The percentage of the contract designated by CDOT for DBE participation. The contract goal for this contract is provided in the Project Special Provision Disadvantaged Business Enterprise Contract Goal.
 - (1) The bidder/Contractor shall make good faith efforts to fulfill the contract goal with eligible DBE participation. For determining whether the contract goal was met prior to award, the contract goal shall be based upon the proposal amount excluding force account items. For determining whether the contract goal was met during and upon completion of the project, the contract goal shall be based upon the total earnings amount.
 - (2) If the lowest apparent bidder demonstrates that it was unable to meet the contract goal but made good faith efforts to do so, the contract goal will be amended and the revised contract goal will be provided on Form 1417, Approved DBE Participation Plan.

- D. *Disadvantaged Business Enterprise (DBE)*. A Colorado-certified Disadvantaged Business Enterprise listed on the Colorado Unified Certification Program (UCP) DBE Directory at www.coloradodbe.org.
- E. *DBE Program Manual*. The manual maintained by the CRBRC which details CDOT's policies and procedures for administering the DBE program. A copy of the DBE Program Manual is available on the CRBRC webpage.
- F. *Eligible Participation*. Work by a DBE that counts toward fulfillment of the contract goal as described in Section 4 below.
- G. *Good Faith Efforts*. All necessary and reasonable steps to achieve the contract goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. Good faith efforts are evaluated prior to award and throughout performance of the Contract. For guidance on good faith efforts, see 49 CFR Part 26, Appendix A.
- H. *Joint Check*. A check issued by the Contractor or one of its subcontractors to a DBE firm and a material supplier or other third party for materials or services to be incorporated into the work.
- I. *Reduction*. A reduction occurs when the Contractor reduces a commitment to a DBE. A reduction constitutes a partial termination.
- J. *Subcontractor*. An individual, firm, corporation or other legal entity to whom the Contractor sublets part of the Contract. For purposes of this special provision, the term subcontractor includes suppliers.
- K. *Substitution*. Substitution occurs when a Contractor seeks to find another DBE to perform work on the contract as a result of a reduction or termination.
- L. *Termination*. A termination occurs when a Contractor no longer intends to use a DBE for fulfillment of a commitment.
- M. *Total Earnings Amount*: Amount of the Contract earned by the Contractor, including approved changes and approved force account work performed, but not including any deductions for liquidated damages, price reduced material, work time violations, overweight loads or liens. The amount of the Contract earned does not include plan force account items (i.e. OJT, pavement incentives, etc).
- N. *Work Code*. A code to identify the work that a DBE is certified to perform. A work code includes a six digit North American Industry Classifications System code plus a descriptor. Work codes are listed on a firm's profile on the UCP DBE Directory. The Contractor may contact the CRBRC to receive guidance on whether a work code covers the work to be performed.

3. Eligible Participation

The following rules will be used to determine whether work performed by a DBE qualifies as eligible participation on the Contract:

- A. *Work Must be Identified in Commitment*. The work performed by the DBE must be reasonably construed to be included in the work area and work code identified by the Contractor in the approved commitment.
 - (1) If the Contractor intends to use a DBE for work that was not listed in the commitment, the Contractor shall submit Form 1420, DBE Participation Plan Modification for approval of the modification. Unapproved work will not count toward the contract goal.

- (2) A DBE commitment cannot be modified to include work for which the DBE was not certified at the time of the approval of the original commitment.
- B. *DBE Must be Certified to Perform the Work.* The DBE must be certified to perform the work upon submission of the commitment and upon execution of the DBE's subcontract.
- (1) When a commitment has been made, but upon review of Form 205, Sublet Permit, CDOT determines that the DBE is no longer certified in the work code which covers the work to be performed, the Contractor may not use the DBE's participation toward the contract goal. The Contractor shall terminate the DBE commitment and seek substitute DBE participation in accordance with Section 9 below.
 - (2) A DBE's work will continue to count as eligible participation if the DBE was certified upon approval of Form 205, Sublet Permit and the certification status changes during the performance of the work.
 - (3) Suppliers must be certified upon execution of the purchase order.
- C. *DBE Performs the Work.* Eligible participation will only include work actually performed by the DBE with its own forces.
- (1) Work performed by the DBE includes the cost of supplies and materials obtained by the DBE for its work on the Contract, including any equipment leased by the DBE, provided that such supplies or equipment are not purchased or leased from the Contractor or a subcontractor that is subletting to the DBE.
 - (2) The term "work actually performed by the DBE with its own forces" includes work by temporary employees, provided such employees are under the control of the DBE.
 - (3) If CDOT or the LPA determines that a DBE has not performed a CUF on the project, no participation by such DBE shall count toward the contract goal.
- D. *DBE Subcontracts to Another Firm.* When a DBE subcontracts part of the work, the value of the subcontracted work may only be counted toward the goal if the subcontractor is a DBE. Performance by non-DBE subcontractors, including non-DBE trucking firms and owner-operators, shall be deducted from the DBE's participation.
- E. *DBE Received Payment for the Work.* Eligible participation only includes work for which the DBE has received payment, including the release of its retainage.
- F. *Special Calculations for Suppliers.* When a DBE supplies goods on a project, the DBE may be classified as a manufacturer, dealer or broker. The DBE's status as a manufacturer, dealer or broker is determined on a contract-by-contract basis and is based upon the actual work performed.
- (1) When a DBE is deemed to be acting as a manufacturer, one hundred percent of the commitment will count as eligible participation.
 - (2) When a DBE is deemed to be acting as a regular dealer (i.e. non-manufacturer supplier), only sixty percent of the commitment will count as eligible participation.
 - (3) When a DBE is deemed to be acting as a broker, only the reasonable brokerage fee will count

as eligible participation.

- G. *Reasonable Fee for Contract-Specific Services.* Services shall count toward the contract goal only if they are specifically required for the performance of the Contract. Non-contract specific expenses may not be counted toward the contract goal. Fees for services must be reasonable. Services include but are not limited to professional services, public involvement, etc. In the case of temporary employment placement agencies, only the placement fee for an individual to be specifically and exclusively used for work on the contract shall count as eligible participation.
- H. *Pre-Approval for Joint Venture Participation.* When a DBE is a participant in a joint venture, the DBE must apply to CDOT to determine how much of the work performed by the joint venture will count toward the contract goal. The DBE shall complete Form 893, Information for Determining DBE Participation when a Joint Venture Includes a DBE. Form 893 shall be submitted to CDOT CRBRC no less than ten days before the submission of the Proposal or to the RCRO no less than ten days before submission of the Form 205 to ensure sufficient time for review.

4. Proposal Requirements

In order to be eligible for award, the following shall be submitted with the proposal to the LPA:

- A. *Form 1413, Bidders List.* The bidder shall list each subcontractor (including both DBE and non-DBE subcontractors) that submitted a quote for participation on the project. Failure to submit a signed Form 1413 will result in rejection of the proposal. *Form 1414, Anticipated DBE Participation Plan.* If the Contract Goal is greater than zero, the bidder shall submit Form 1414 to document anticipated DBE participation.
 - (1) If the Bidder has not obtained any DBE commitments, it shall still submit Form 1414 documenting zero anticipated participation. If the Contract Goal is greater than zero, failure to submit a signed Form 1414 shall result in rejection of the proposal.
 - (2) The bidder shall list the DBE, work area(s), commitment amount and estimated eligible participation for each commitment. Once Form 1414 is submitted, a commitment may only be terminated or reduced in accordance with Section 9 below. The bidder is responsible for ensuring that commitments, and the estimated eligible participation resulting therefrom, have been properly calculated prior to submitting its proposal.
 - (3) If the bidder is a DBE, the bidder must include itself in Form 1414 and list the work area(s) and amount that it intends to self-perform and count as eligible participation on the contract.
 - (4) Commitments may be made to second tier or lower DBE subcontractors; however, the Contractor is ultimately responsible for the fulfillment of the commitment and shall sign the Form 1415, Commitment Confirmation.

5. Additional Forms Due Prior to Award.

If the contract goal is greater than zero, or if the bidder has voluntarily made commitments, the Bidder shall submit the following forms to the LPA within five calendar days of selection as the lowest apparent bidder. These forms must be submitted to the CDOT CRBRC concurrent with the request for concurrence to award.

- A. *Form 1415, Commitment Confirmation.* A Form 1415, Commitment Confirmation shall be obtained from

each DBE listed on Form 1414. The bidder shall complete Section 1 and the DBE shall complete Section 2 of Form 1415. Form 1415s shall be consistent with the commitments listed on Form 1414. The bidder shall not modify commitments listed on Form 1414 without good cause and approval from CDOT. The bidder shall contact CDOT if any issues arise which may require the bidder to alter or terminate a commitment.

- B. *Form 1416, Good Faith Effort Report.* If the total eligible participation listed on Form 1414 does not meet the contract goal, the lowest apparent bidder shall also submit Form 1416, Good Faith Effort Report and any supporting documentation that the bidder would like considered by CDOT as evidence of good faith efforts.

6. Commitment and Good Faith Effort Review

- A. *Commitment Review.* CDOT will evaluate the Form 1414 and each Form 1415 to ensure that the commitment is valid and has been properly calculated. CDOT may investigate or request additional information in order to confirm the accuracy of a commitment. If CDOT determines that the total estimated eligible participation of the commitments does not meet the contract goal, within two business days of notice from CDOT, the bidder shall submit Form 1416 to CDOT.
- B. *Good Faith Effort Review.* If the total eligible participation of Form 1414 and all supporting Form 1415s does not meet the contract goal, CDOT will review Form 1416 and all supporting documentation submitted by the bidder in order to determine whether the bidder has demonstrated good faith efforts to obtain DBE participation. CDOT will use 49 CFR Part 26, Appendix A as a guide for determining whether the bidder made good faith efforts to meet the contract goal. A bidder will be deemed to not have made good faith efforts if the bidder lists a DBE for a work area for which the DBE is not certified and the bidder cannot establish a reasonable basis for its determination. CDOT may consider and approve commitments made after submission of the bid if the Bidder demonstrates that (1) good faith efforts were made prior to submission of the bid and (2) there is a reasonable justification for not obtaining the commitments prior to submission of the bid.
- C. *Administrative Reconsideration.* If CDOT determines that the bidder did not demonstrate good faith efforts to meet the contract goal, it will provide the bidder and LPA with written notice of its determination. The bidder will be provided an opportunity to request administrative reconsideration of the decision. The process for reconsideration is set forth in the *Good Faith Effort Appeal Process*, which is an Appendix I to the DBE Program Manual. A copy of the *Good Faith Effort Appeal Process* will be included in the written notice from CDOT.
- D. *Form 1417, Approved DBE Participation Plan.* If CDOT determines that the bidder has met the contract goal or made good faith efforts to do so, CDOT will issue to the bidder, with a copy to the LPA, Form 1417, Approved DBE Participation Plan, documenting the approved commitments. If CDOT determines that the bidder did not meet the contract goal but made good faith efforts to do so, via the Form 1417 CDOT will amend the contract goal in accordance with the commitments that were obtained and attach an explanation of its determination.

7. Ongoing Oversight of DBE Participation

- A. *Consistency Review.* CDOT will review Form 205, Sublet Permit Application to determine whether the work being sublet is consistent with the DBE commitments. CDOT may withhold approval of the sublet or direct the LPA to stop performance of the work if the Contractor has reduced, terminated, or otherwise modified the type or amount of work to be performed by a DBE without seeking prior approval.

- B. *Form 1419, DBE Participation Report.* The Contractor shall submit Form 1419, DBE Participation Report to the LPA Engineer on a quarterly basis (January 15, April 15, July 15, and October 15) and upon completion of the Contract. The LPA may withhold progress payments if the quarterly Form 1419 is not received on time. The LPA will not provide final payment on the Contract until the final Form 1419 has been reviewed and approved by the CDOT RCRO.
- C. *Joint Checks.* All joint checks must be approved by the CDOT RCRO before they are used in payment to a DBE. Joint checks used in payments to DBEs will be monitored closely to ensure (1) the DBE is performing a CUF and (2) the joint checks are not being used in a discriminatory manner. The Contractor shall request approval for the use of a joint check in a written letter signed by the DBE and the Contractor, stating the reason for the joint checks and the approximate number of checks that will be needed.
- D. *Commercially Useful Function.* CDOT will monitor performance during the Contract to ensure each DBE is performing a CUF. If CDOT or the LPA determines that a DBE is not performing a CUF, no work performed by such DBE shall count as eligible participation. The DBE, Contractor, and any other involved third parties may also be subject to additional enforcement actions.
- (1) When determining whether a DBE is performing a CUF, CDOT and the LPA will consider the amount of work subcontracted, industry practices, the amount the firm is to be paid compared to the work performed and eligible participation claimed, and any other relevant factors.
 - (2) With respect to material and supplies used on the Contract, in order to perform a CUF the DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing the material, if applicable, and paying for the material itself.
 - (3) With respect to trucking, in order to perform a CUF, the DBE trucking firm must own and operate at least one fully licensed, insured and operational truck used on the Contract. Additionally, the DBE trucking firm must be responsible for the management and supervision of the entire trucking operation for which it is responsible on the Contract.
 - (4) A DBE does not perform a CUF when its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation. CDOT will evaluate similar transactions involving non-DBEs in order to determine whether a DBE is an extra participant.
 - (5) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved, CDOT and the LPA will presume that the DBE is not performing a CUF. The DBE may present evidence to rebut this presumption.

8. DBE Participation Plan Modifications

- A. *Contractor must Use DBEs Listed in Approved Plan.* The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which it is listed unless the Contractor obtains the CDOT RCRO's written consent to terminate, reduce or modify the commitment. Unless CDOT grants such consent, the Contractor will not be entitled to payment for the work or materials. Failure to carry out the requirements of this section is a material breach of the Contract and may result in the termination of the Contract or other remedies established by CDOT or the LPA.

- B. *Form 1420, DBE Participation Plan Modification Request.* During the performance of the Contract, the Contractor shall use Form 1420, DBE Participation Plan Modification Request to communicate all requests for termination, reduction, substitution, and waivers to the CDOT RCRO. One Form 1420 may include multiple requests and must be submitted at the time of the occurrence or, if that is not possible, within a reasonable time of the occurrence requiring termination, reduction, substitution or waiver.
- C. *Commitment Terminations and Reductions.* No commitment shall be terminated or reduced without CDOT's approval. Terminations and reductions include, but are not limited to, instances in which a Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces, those of an affiliate, a non-DBE firm or with another DBE firm. In order to receive approval, the Contractor shall:
- (1) Have good cause for termination or reduction. Good cause may include:
 - (i) the DBE fails or refuses to execute a written contract;
 - (ii) the DBE fails or refuses to perform the work of its subcontract consistent with normal industry standards, provided that such failure is not the result of bad faith or discriminatory actions of the Contractor or one of its subcontractors;
 - (iii) the DBE fails to meet reasonable, nondiscriminatory bond requirements;
 - (iv) the DBE becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (v) the DBE is ineligible to work because of suspension or debarment proceedings or other state law;
 - (vi) the DBE is not a responsible contractor;
 - (vii) the DBE voluntarily withdraws from the project and provides written notice to CDOT,
 - (viii) the DBE is ineligible to receive DBE credit for the work required;
 - (ix) the DBE owner dies or becomes disabled and is unable to complete the work;
 - (x) the DBE ceases business operations or otherwise dissolves;
 - (xi) or other documented good cause that compels termination. Good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.
 - (2) Provide the DBE notice of the Contractor's intent to terminate or reduce the commitment and the reason for such termination or reduction, with a copy to the CDOT RCRO and LPA;
 - (3) In the notice of intent, provide the DBE at least five calendar days to respond to the notice and inform CDOT and the Contractor of the reasons, if any, why it objects to the proposed termination or reduction and any reasons that it shall not be approved. The Contractor is not required to provide the five calendar days written notice in cases where the DBE in question has provided written notice that it is withdrawing from the subcontract or purchase order. The notice period may be reduced by the CDOT RCRO if required by public necessity.

- (4) Following the notice period, if the Contractor decides to proceed, submit Form 1420 requesting approval of the termination or reduction.
- (5) When a commitment is terminated or reduced (including when a DBE withdraws), make good faith efforts to find another DBE to substitute. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the participation that was terminated or reduced up to the contract goal.

D. *Contract Changes.* In the event of a contract change:

- (1) If the LPA eliminates or reduces work committed to a DBE, such change shall be considered good cause for termination or reduction in accordance with Section 9.B above. The Contractor shall follow the processes outlined in Section 9.B.
- (2) If the LPA issues a change which increases or adds new work items, the Contractor shall ensure that it has obtained sufficient DBE participation to meet the Contract Goal, or has made good faith efforts to do so.

E. *Process for Substitution or Increase in Participation to Meet the Contract Goal.* When the Contractor must obtain additional DBE participation to meet the Contract Goal, whether resulting from an approved termination or reduction or a change to the Contract, the Contractor shall:

- (1) Increase the participation of a DBE for any work items previously identified in an approved commitment without seeking CDOT approval; provided, however, that at its discretion, the CDOT RCRO may request a Form 1420 documenting such additional participation; or
- (2) If the Contractor needs to add new work to a commitment or obtain additional participation from a DBE that is not already participating on the contract pursuant to an approved commitment, submit a Form 1420 and Form 1415 to the RCRO requesting approval of the additional participation; or
- (3) If the Contractor determines that additional DBE participation cannot be obtained, submit a Form 1420 to the RCRO requesting waiver of the participation. The Contractor shall include its justification for not obtaining additional participation and, at its discretion, CDOT may require additional information regarding the efforts of the Contractor. If the Contractor has not obtained substitute participation, the RCRO may require the Contractor to submit evidence of good faith efforts to substitute. The contractor shall have seven days to submit such information. This period may be extended at the discretion of the RCRO.

9. Payment Reduction

The Contractor's retainage will not be released until the CDOT RCRO has determined whether the Contractor will be subject to a payment reduction. Payment reductions will be calculated as follows:

- A. *Failure to Fulfill Commitments.* If the Contractor terminated or reduced a commitment, the Contractor will be subject to a payment reduction for any termination or reduction which was not approved via a Form 1420.
- B. *Failure to Meet Contract Goal.* If the Contractor failed to meet the contract goal, the Contractor will be subject to a payment reduction for the portion of the contract goal that was not met and was not waived via an approved Form 1420.

- C. *Duplication.* The contractor will not be subject to duplicate reduction for the same offense.
- D. *Adjustments.* CDOT may adjust the payment reduction wherein the Contractor demonstrates that its failure to obtain DBE participation was due to circumstances outside of its control.

10. Other Enforcement

- A. *Investigations.* As it determines necessary, CDOT or the LPA may conduct reviews or investigations of participants. All participants, including, but not limited to, DBE firms and applicants for DBE certification, complainants, and contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information.
- B. *Intimidation and retaliation.* Participants shall not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by the DBE program or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the DBE program.
- C. *Consequences of Non-Compliance.* Failure to comply with subsections 11 A. or 11 B. shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).
- D. *Fraud and Misrepresentation.* If CDOT or the LPA determines that a Contractor or subcontractor was a knowing and willing participant in any intended or actual subcontracting arrangement contrived to artificially inflate DBE participation or any other business arrangement determined by CDOT or the LPA to be unallowable, or if the Contractor engages in repeated violations, falsification or misrepresentation, CDOT may:
 - (1) refuse to count any fraudulent or misrepresented DBE participation;
 - (2) withhold progress payments to the Contractor commensurate with the violation;
 - (3) suspend or reduce the Contractor's prequalification status;
 - (4) refer the matter to the Office of Inspector General of the US Department of Transportation for investigation; or
 - (5) seek any other available contractual remedy.

EXHIBIT T

ON THE JOB TRAINING SPECIAL PROVISION

22.1 CDOT OJT Standard Special Provision

For On the Job Training

This On-the-Job Training (OJT) special provision is an implementation of 23 U.S.C, 140(a), a federal requirement to provide equal opportunity and training on federal-aid construction projects. The Contractor shall meet the requirements of the FHWA 1273 for all apprentices and trainees. For additional guidance, please look at the OJT Contractor Manual*.

1. Goal Setting

CDOT will set OJT goals for every federally-assisted project. Goals for the projects will be set based on the criteria that is outlined in the 23 CFR Part 230, Appendix B to Subpart (A):

- A. Availability of minorities, women, and disadvantaged persons for training;
- B. The potential for effective training;
- C. Duration of the contract;
- D. Dollar value of the contract;
- E. Total normal workforce that the average bidder could be expected to use;
- F. Geographic location;
- G. Type of work;
- H. The need for journey-level workers in the area;
- I. Recognition of the state's goal;
- J. A satisfactory ratio of trainees to journeymen expected to be on the workforce.

The number of required training hours will be identified in the Contract. The following chart provides guidelines based on contract value, but the required number of hours will be determined by CDOT after consideration of the aforementioned variables.

Contract dollar value	Training hours to be provided on the project
Up to 1 million	0
>1 - 2 million	320
>2 - 4 million	640
>4 - 6 million	1280
>6 - 8 million	1600
>8 - 12 million	1920
>12 - 16 million	2240
>16 - 20 million	2560

For each increment of \$5 million, over \$20 million	1280
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Training Plan Options

CDOT accepts the following training programs:

- A. CDOT’s pre-approved classifications utilization program (PAC-UP);
- B. A registered U.S. Department of Labor training program or apprenticeship program;
- C. Approved programs through workforce centers and through specific groups like Colorado Contractors Association (CCA) and Western Colorado Contractors Association (WCCA);
- D. A Contractor specific plan approved by CDOT and the Federal Highway Administration (FHWA).

The minimum length and type of training for each skilled craft shall be as established in the training program selected by the Contractor.

When one or more approved plans is chosen, the Contractor shall submit the OJT Contractor Commitment to Meet OJT Requirements, CDOT Form 1337 to CDOT. Additional pre-approved training programs and/or additional apprentices/trainees may be utilized at any point throughout the project. The plan option(s) that the Contractor chooses will be effective for the duration of the project.

3. Journey-Level Worker to Apprentice/Trainee Ratio

The OJT goal requirement shall be met through approved trainee(s)/apprentice(s) working on the CDOT project under the supervision of a journey-level worker. For the CDOT Pre-Approved Classification Training Programs (PAC-UP), the apprentice/trainee ratio to journey-level worker shall not exceed a one to one ratio for all classifications, and the Contractor shall not exceed 25 percent of the workforce as trainees/apprentices at any time. Furthermore, it is at CDOT’s discretion that a stricter ratio guideline may be imposed as outlined in the specific training classification. For all other approved programs, the apprentice/trainee ratio shall be as outlined in the specific program. When apprentices/trainees are on the job without proper supervision as outlined above, they shall be paid full Davis-Bacon wages.

4. Trainee Selection

Two components must be considered when choosing a trainee:

- A. The intent of this program is for Contractors to recruit and train entry-level individuals or individuals who will be working within new classifications and guide them toward journey-level status in that specific classification. A trainee will not be approved in any classification for which they have already obtained journey-level status.
- B. Another intent of the OJT program is the primary consideration for the Contractor to use minorities, women, and disadvantaged persons to fulfill the trainee roles, and as such, the Contractor shall make every effort to enroll such individuals in the program by using “systematic and direct recruitment through public and private sources.”

The consideration to include women and minorities is based on the regulation; however, it will not be used to systematically deny any one person or group from the opportunity to be a part of the OJT program. CDOT may reject non-minority male trainees for entry into the program if it is determined that a Contractor failed to make sufficient good faith efforts (GFE) to hire minorities or female trainees and/or the Contractor failed to document or submit evidence of its GFE to do so. CDOT will consider a Contractor’s documentation of all GFE on a case-by-case basis and will take into account the items listed in the goal setting section of this specification. For more information, please see Section 11 of this specification.

5. OJT Apprentice/Trainee Approval

As a condition of the OJT program, the Contractor will:

- A. Notify all employees at the start of employment and at a minimum of at least once per year regarding the available training programs, positions, and eligibility requirements. The Contractor shall document that this information was conveyed to and received by employees.
- B. Provide each trainee with a copy of his or her enrollment form (if applicable) and the training program within a month of starting the chosen plan.

The OJT submittals (CDOT Form 1337, Contractor Commitment to Meet OJT Requirements; CDOT Form 832, Trainee Status and Evaluation; CDOT Form 838, OJT apprentice/trainee Record) shall be filled out completely and approved or rejected by CDOT. If the apprentice/trainee is working within the proposed classification before approval is granted, full Davis-Bacon prevailing wages shall be paid to the individual.

The Regional Civil Rights Office must approve the CDOT Form 838 prior to any of the hours counting toward the OJT goal. If there is a CDOT delay that is completely outside of the Contractor's responsibility for approval of the apprentices/trainees, and if approval is ultimately granted, the date that will be utilized will be ten business days after the date that the CDOT Form 838 was submitted.

The Contractor shall retain full responsibility for meeting the training requirements imposed by this special provision.

6. Eligible Work Activities that Count Toward the Training Goal

The work hours that are completed on the site of work and per the training documents for approved apprentices/trainees in approved classifications and programs will apply toward the project goal. Hours for work performed outside the individual's approved training classification will not count toward the project OJT goal and the individual shall be paid full applicable prevailing wage.

Job shadowing can apply toward the project goal if it is written into the specific training plan. If the Contractor is using CDOT's PAC-UP training program, job shadowing can apply toward the project goal when the approved employee is performing within the "Observation" component of the plan (hours vary by classification). Non-CDOT project hours will not be accepted toward the project goal.

Although US DOL apprenticeship programs can use the reduced wages for any CDOT job (with or without an OJT goal) with approval, none of these "additional" hours may be banked or included for use as part of the required special provisions on any project other than that for which it was approved.

The Contractor may count OJT hours accomplished by a subcontractor with an approved plan. The subcontractor's trainee or apprentice, who is enrolled in any of the approved OJT programs and is contributing toward meeting a project's OJT goal hours, can count toward the project's OJT goal to satisfy the requirement of this specification. A subcontractor who chooses to participate in meeting the OJT goal shall follow the same process as the Contractor in terms of approving apprentices/trainees, submitting forms, etc. The Contractor retains the full responsibility for meeting the training requirements imposed by this special provision.

7. Contractor Training and Trainee Monitoring

The Contractor's representative (supervisor, manager, or other designee) will evaluate progress for the apprentice/trainee monthly and will provide a copy to the apprentice/trainee of the submitted CDOT Form 832 within 30 calendar days. This evaluation will include documentation of the apprentice/trainee's

performance including what was done well and what needs to be improved. The Contractor training and monitoring will be evaluated through CDOT's use of the CDOT Form 200 Interview.

8. Wages

The Contractor may pay apprentice/trainee wages at a reduced rate for those that are in an approved program according to the following guidelines:

US DOL Apprenticeship Programs

Rates (at minimum) will be paid according to the scaled adjustments for a registered US DOL Apprentice. Fringe benefits (either in cash and/or bona fide benefits in lieu of cash) will be paid in full and as outlined by the bargained agreement. If fringe benefits are not mentioned as part of a bargained agreement or if there is no collectively bargained agreement, full fringe benefits will be paid as outlined through the US DOL wage decision. Approved US DOL apprenticeship programs can use the reduced wages for any CDOT project.

If the Contractor is using a registered US DOL Apprenticeship Program, and is seeking to pay apprenticeship rates where the trainee hours are not being applied to the CDOT OJT project goal, the following documentation is required to ensure wages are being paid correctly: apprenticeship program registration, OA (formerly BAT) certificates, and collective bargaining agreement including the wage sheet.

Other Approved Programs

For all other OJT wage reductions, reduced percentages are allowed for the project if there is a goal greater than zero as outlined in the 23 CFR Appendix B to Subpart A of Part 230 (as described in this section), in the collectively bargained agreement, or as outlined in the specific plans. If the Contractor chooses to pay the trainee rates, the reduced percentage shall be based only on the base rate of pay. Fringe benefits shall be paid at 100 percent of the journey-level wage. If the apprentice/trainee is working within the proposed classification before approval is granted, full Davis-Bacon prevailing wages shall be paid to the apprentice/trainee.

Please note: The minimum trainee wage (base and fringe) shall be no less than \$13.00 per hour. Trainees shall be paid at minimum:

First half of the training period -- at least 60 percent of the appropriate minimum journey-level rate

Third quarter of the training period – at least 75 percent of the appropriate minimum journey-level rate

Last quarter of the training period -- at least 90 percent of the appropriate minimum journey-level rate

9. Contractor Reporting

The Contractor shall keep all data associated with the trainees and the project for a period of at least three years from the closing date of the Contract.

10. Reimbursement to Contractors

For the purposes of reimbursement, the Contractor will have satisfied its responsibilities under this specification if CDOT has determined that it has fulfilled the acceptable number of training hours. Contractors will be reimbursed at a rate of \$10.00 per hour per (approved) trainee for all OJT hours worked in approved classifications up to the project goal.

The Contractor will be reimbursed for no more than the amount outlined in the OJT Force Account budget.

11. OJT Good Faith Efforts (GFE)

CDOT recognizes two explanations of good faith efforts: (1) The Contractor will be required to prove an effort has been made to achieve a diversified workforce, but it has not yet been accomplished, or (2) The attempt has been made to meet the number of required OJT hours by using approved trainees or apprentices in approved classification(s) utilizing approved plans, but the Contractor cannot meet the required number of

hours. In either case, a GFE will be required, and the Region Civil Rights Office will make the determination.

- A. If the Contractor does not meet its OJT project goal with the inclusion of some female and/or minority trainees, the Contractor may be requested to produce documentation of adequate good faith efforts taken to fill that position with a minority or female applicant. Good faith efforts are designed to achieve equal opportunity through positive, assertive, and continuous result-oriented measures. Good faith efforts should be taken as hiring opportunities arise.
- B. If the project goal is not met, The Contractor may submit a CDOT Form 1336, Waiver Request for Contract's OJT Hours. On the form, the Contractor shall outline and submit all good faith efforts made when it is believed that the required number of training hours will not be met. If GFE is not demonstrated and approved, The Contractor will be subject to payment reductions outlined in the Disincentive Section.

If a good faith effort has been denied by CDOT, the Contractor may ask for reconsideration by the Region Civil Rights Manager and the Resident Engineer for the region where work is being performed. Additionally, if requested by the Contractor, the Region Civil Rights Office and the Project Engineer will meet with the Contractor to discuss the Contractor's initial Good Faith Effort determination.

12. Disincentive

A failure to provide the required training without the demonstration and approval of GFE to meet the project OJT goal may result in the Region Civil Rights Office assigning the following disincentive: A sum representing the total number of hours not met in the contract shall be multiplied by the journey worker hourly wages plus fringe benefits [(hours not met) x (dollar per hour + fringe benefits) = disincentive amount].

In order to obtain the disincentive amount, the journey worker wages will be figured using the prevailing wages for the classifications outlined on the CDOT Form 1337. If a single classification is noted on the submitted CDOT Form 1337, then that one wage will be used to figure the monetary amount owed. If multiple classifications are used, then the journey worker wages of all classifications will be used to determine an average wage rate. If the Contractor does not submit any documentation toward the OJT goal, the disincentive rate will be calculated at \$30.00 per hour. CDOT will provide the Contractor a written notice at the final acceptance stage of the project informing them of the noncompliance with this specification which will include a calculation of the disincentive(s) to be assessed.

13. Dispute Process

If the Contractor disagrees with the denial of a GFE and is accordingly assigned a disincentive, and there is no resolution between parties, escalation steps may be taken. Please read the OJT Contractor Manual for more specific guidance.

*All forms are available from the CDOT Center for Equal Opportunity, through the CDOT Regional Civil Rights Manager, or on CDOT's website at

<http://www.coloradodot.info/business/bidding/Bidding%20Forms/Bid%20Winner%20Forms>

EXHIBIT U

FHWA 1273

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

I. GENERAL

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

The applicable requirements of Form FHWA-

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency

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

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

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

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

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

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

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

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

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

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

will be reviewed and explained. The meetings will be conducted by the EEO Officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information

is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

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

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

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

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

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

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

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

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

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

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

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

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

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

Contracting agencies may elect to apply these requirements to other projects.

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

format and FHWA program requirements.

1. Minimum wages

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

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4).

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification

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

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

will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

2. Withholding

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

as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

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

23 10. Certification of eligibility.

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

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

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

v. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized

representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

vi. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the

contract as a whole and in general are to be limited to minor components of the overall contract.

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

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

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

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

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

vii. SAFETY: ACCIDENT PREVENTION

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

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

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

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

viii. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

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

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier

covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

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

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

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

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

* * * * *

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

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

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

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

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

(4) Have not within a three-year period

preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

this transaction originated may pursue available remedies, including suspension and/or debarment.

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

xi. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal

contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

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

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

- a. To the extent that qualified persons regularly residing in the area are not available.
- b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
- c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

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

4. If, within one week following the placing of a job order by the contractor with the State Employment Service,

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

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

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

~END OF FHWA 1273~

EXHIBIT V
DAVIS BACON WAGE RATES

July 13, 2018

**U.S. DEPT. OF LABOR DAVIS BACON MINIMUM WAGES COLORADO HIGHWAY
CONSTRUCTION
GENERAL DECISION NUMBER - CO180019**

NOTICE

This is a standard special provision that revises or modifies CDOT's *Standard Specifications for Road and Bridge Construction*. It has gone through a formal review and approval process and has been issued by CDOT's Project Development Branch with formal instructions for its use on CDOT construction projects. It is to be used as written without change. Do not use modified versions of this special provision on CDOT construction projects, and do not use this special provision on CDOT projects in a manner other than that specified in the instructions, unless such use is first approved by the Standards and Specification Unit of the Project Development Branch. The instructions for use on CDOT construction projects appear below.

Other agencies which use the *Standard Specifications for Road and Bridge Construction* to administer construction projects may use this special provision as appropriate and at their own risk.

Instructions for use on CDOT construction projects:

Use this standard special provision on all federal-aid projects with contracts exceeding \$2000, except for non-ARRA projects on roadways classified as local roads or rural minor collectors, which are exempt. Projects on local roads, rural minor collectors, and enhancement projects funded with ARRA funds are not exempt.

Decision Nos. CO180019 dated January 05, 2018 supersedes Decision Nos. CO170019 dated January 06, 2017.		<u>Modifications</u>		<u>ID</u>
When work within a project is located in two or more counties and the minimum wages and fringe benefits are different for one or more job classifications, the higher minimum wages and fringe benefits shall apply throughout the project.		<u>MOD</u>	<u>Date</u>	<u>Page</u>
		<u>Number</u>	<u>07-13-</u>	<u>Number(s)</u>
		1	18	1
General Decision No. CO180019 applies to the following counties: Denver and Douglas counties.				
General Decision No. CO180019 The wage and fringe benefits listed below reflect collectively bargained rates.				
Code	25 Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
1279	CARPENTER (Form Work Only)	25.50	9.47	1
	TRAFFIC SIGNALIZATION:			
	Traffic Signal Installation			
1280	Zone 1	26.42	4.75% + 8.68	
1281	Zone 2	29.42	4.75% + 8.68	
	<u>Traffic Installer Zone Definitions</u> Zone 1 – Within a 35 mile radius measured from the addresses of the following cities: Colorado Springs - Nevada & Bijou Denver - Ellsworth Avenue & Broadway Ft. Collins - Prospect & College Grand Junction - 12th & North Avenue Pueblo - I-25 & Highway 50 Zone 2 - All work outside these areas.			
	POWER EQUIPMENT OPERATOR:			
	Hydraulic Backhoe			
1282	Wheel Mounted, under ¾ yds.	27.60	10.10	
1283	Backhoe/Loader combination	27.60	10.10	
	Drill Rig Caisson			
1284	Smaller than Watson 2500 and similar	27.60	10.10	
1285	Watson 2500 similar or larger	27.92	10.10	
	Loader			
1286	Up to and including 6 cubic yards	27.60	10.10	
1287	Denver County - Under 6 cubic yards	27.60	10.10	
1288	Denver County - Over 6 cubic yards	27.75	10.10	

General Decision No. CO180019				
The wage and fringe benefits listed below reflect collectively bargained rates.				
Code	26 Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Motor Grader			
1289	Douglas county - Blade Rough	27.60	10.10	
1290	Douglas county - Blade Finish	27.92	10.10	
	Crane			
1291	50 tons and under	27.75	10.10	
1292	51 to 90 tons	27.92	10.10	
1293	91 to 140 tons	28.55	10.10	
	Scraper			
1294	Single bowl under 40 cubic yards	27.75	10.10	
1295	40 cubic yards and over	27.92	10.10	
General Decision No. CO180019				
The wage and fringe benefits listed below do not reflect collectively bargained rates.				
1296	CARPENTER (Excludes Form Work)	19.27	5.08	
	CEMENT MASON/CONCRETE FINISHER:			
1297	Denver	20.18	5.75	
1298	Douglas	18.75	3.00	
1299	ELECTRICIAN (Excludes Traffic Signal Installation)	35.13	6.83	
1300	FENCE ERECTOR (Excludes Link/Cyclone Fence Erection)	13.02	3.20	
1301	GUARDRAIL INSTALLER	12.89	3.20	
	HIGHWAY/PARKING LOT STRIPING:			
	Painter			
1302	Denver	12.62	3.21	
1303	Douglas	13.89	3.21	
	IRONWORKERS:			
1304	Reinforcing (Excludes Guardrail Installation)	16.69	5.45	
1305	Structural (Includes Link/Cyclone Fence Erection), (Excludes Guardrail Installation)	18.22	6.01	

General Decision No. CO180019

The wage and fringe benefits listed below do not reflect collectively bargained rates.

Code	27 Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	LABORERS:			
1306	Asphalt Raker	16.29	4.25	
1307	Asphalt Shoveler	21.21	4.25	
1308	Asphalt Spreader	18.58	4.65	
	Common or General			
1309	Denver	16.76	6.77	
1310	Douglas	16.29	4.25	
1311	Concrete Saw (Hand Held)	16.29	6.14	
1312	Landscape and Irrigation	12.26	3.16	
	Mason Tender - Cement/Concrete			
1313	Denver	16.96	4.04	
1314	Douglas	16.29	4.25	
	Pipelayer			
1315	Denver	13.55	2.41	
1316	Douglas	16.30	2.18	
	Traffic Control			
1317	Flagger	9.55	3.05	
1318	Sets Up/Moves Barrels, Cones, Install Signs, Arrow Boards and Place Stationary Flags, (Excludes Flaggers)	12.43	3.22	
	PAINTER:			
1319	Spray Only	16.99	2.87	
	POWER EQUIPMENT OPERATOR:			
	Asphalt Laydown			
1320	Denver	22.67	8.72	
1321	Douglas	23.67	8.47	
	Asphalt Paver			
1322	Denver	24.97	6.13	
1323	Douglas	25.44	3.50	

General Decision No. CO180019

The wage and fringe benefits listed below do not reflect collectively bargained rates.

Code	28 Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	Asphalt Roller			
1324	Denver	23.13	7.55	
1325	Douglas	23.63	6.43	
1326	Asphalt Spreader	22.67	8.72	
	Backhoe/Trackhoe			
1327	Douglas	23.82	6.00	
1328	Bobcat/Skid Loader	15.37	4.28	
1329	Boom	22.67	8.72	
	Broom/Sweeper			
1330	Denver	22.47	8.72	
1331	Douglas	22.96	8.22	
1332	Bulldozer	26.90	5.59	
1333	Concrete Pump	21.60	5.21	
	Drill			
1334	Denver	20.48	4.71	
1335	Douglas	20.71	2.66	
1336	Forklift	15.91	4.68	
	29 Grader/Blade			
1337	30 Denver	22.67	8.72	
1338	31 Guardrail/Post Driver	16.07	4.41	
	32 Loader (Front End)			
1339	Douglas	21.67	8.22	
	34 Mechanic			
1340	Denver	22.89	8.72	
1341	Douglas	23.88	8.22	

General Decision No. CO180019

The wage and fringe benefits listed below do not reflect collectively bargained rates.

Code	35 Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	POWER EQUIPMENT OPERATOR (con't.):			
	36 Oiler			
1342	Denver	23.73	8.41	
1343	Douglas	24.90	7.67	
	37 Roller/Compactor (Dirt and Grade Compaction)			
1344	Denver	20.30	5.51	
1345	Douglas	22.78	4.86	
1346	38 Rotomill	16.22	4.41	
	Screed			
1347	Denver	22.67	8.38	
1348	Douglas	29.99	1.40	
1349	Tractor	13.13	2.95	
	TRAFFIC SIGNALIZATION:			
	Groundsman			
1350	Denver	17.90	3.41	
1351	Douglas	18.67	7.17	
	TRUCK DRIVER:			
	Distributor			
1352	Denver	17.81	5.82	
1353	Douglas	16.98	5.27	
	Dump Truck			
1354	Denver	15.27	5.27	
1355	Douglas	16.39	5.27	
1356	Lowboy Truck	17.25	5.27	
1357	Mechanic	26.48	3.50	
	Multi-Purpose Specialty & Hoisting Truck			
1358	Denver	17.49	3.17	
1359	Douglas	20.05	2.88	

General Decision No. CO180019

The wage and fringe benefits listed below do not reflect collectively bargained rates.

Code	39 Classification	Basic Hourly Rate	Fringe Benefits	Last Mod
	TRUCK DRIVER (con't.):			
	Pickup and Pilot Car			
1360	Denver County	14.24	3.77	
1361	Douglas County	16.43	3.68	
1362	Semi/Trailer Truck	18.39	4.13	
1363	Truck Mounted Attenuator	12.43	3.22	
	Water Truck			
1364	Denver County	26.27	5.27	
1365	Douglas County	19.46	2.58	

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program.

If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7).

Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION NO. CO180019

Contract Control Number:

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PWADM-201524268-01

Contractor Name: Kiewit Infrastructure Co.

By: Chris J. Kiewit

Name: CHRISTOPHER J. KIEWIT
(please print)

Title: SENIOR VICE PRESIDENT
(please print)

ATTEST: [if required]

By: [Signature]

Name: Fiora Biggs
(please print)

Title: EXECUTIVE ASSISTANT
(please print)

