EXHIBIT 3

FEDERAL REQUIREMENTS

Exhibit Description	No. of Pages
Attachment 1 – Federal Requirements for Federal-Aid Construction Projects	2
Attachment 2 – FHWA Form 1273	23
Attachment 3 – Wage Determination of the Secretary of Labor	1
Attachment 4 – Equal Employment Opportunity	6
Attachment 5 – Affirmative Action	5
Attachment 6 – Lobbying Certification	2
Attachment 7 – Compliance with Buy America Requirements	2
Attachment 8 – Certification of Nondiscrimination in Employment	1
Attachment 9 – On-the-Job Training Program	4
Attachment 10 – Nondiscrimination	2

ATTACHMENT 1 TO EXHIBIT 3

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — Regardless of whether the Work herein proposed will be financed in whole or in part with Federal funds, all of the statutes, rules and regulations promulgated by the Federal Government that would be applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 3. Whenever in said required contract provisions references are made to:

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

(b) "contractor", "prime contractor", "bidder", "Federal-aid construction contractor", "prospective first tier participant" or "First Tier Participant", such references shall be construed to mean DB Contractor or its authorized representative;

(c) "contract", "prime contract", "Federal-aid construction contract" or "design-build contract", such references shall be construed to mean the Design-Build Agreement ("DBA") between DB Contractor and TxDOT for the Project;

(d) "subcontractor", "supplier", "vendor", "prospective lower tier participant", "lower tier prospective participant", "Lower Tier Participant" or "lower tier subcontractor", such references shall be construed to mean any Subcontractor or Supplier; and

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

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

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

NON-COLLUSION PROVISION. — The provisions in this section are applicable to all contracts except contracts for Federal Aid Secondary Projects. Title 23, United States Code, Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that each bidder file a sworn statement executed by, or on behalf of,

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

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

CONVICT PRODUCED MATERIALS

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

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

ACCESS TO RECORDS

a. As required by 49 CFR 18.36(i)(10), DB Contractor and its subcontractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of DB Contractor and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof. In addition, as required by 49 CFR 18.36(i)(11), DB Contractor and its subcontractors shall retain all such books, documents, papers and records for three years after final payment is made pursuant to any such contract and all other pending matters are closed.

b. DB Contractor agrees to include this section in each Subcontract at each tier, without modification except as appropriate to identify the subcontractor who will be subject to its provisions.

ATTACHMENT 2 TO EXHIBIT 3

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA Form 1273
Revised May 1, 2012

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such

complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

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

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

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

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

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

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

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

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

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

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

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

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held

by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide

apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

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

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

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

b. Trainees (programs of the USDOL).

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

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the

provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to

inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier

subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT 3 TO EXHIBIT 3

FEDERAL PREVAILING WAGE RATE

The wage rates listed are those predetermined by the Secretary of Labor and State Statute to be the minimum wages paid. Any wage rate that is not listed must be submitted to the Engineer for approval. IMPORTANT NOTICE FOR STATE PROJECTS; only the controlling wage rate zone applies to the contract. Effective 1-3-2014.

Classification Number	Classification Description	Zone TX16
1428	Agricultural Tractor Operator	$12.69
1300	Asphalt Distributor Operator	$15.55
1303	Asphalt Paving Machine Operator	$14.36
1106	Asphalt Raker	$12.12
1615	Boom Truck Operator	$18.36
1305	Broom or Sweeper Operator	$11.04
1124	Concrete Finisher, Paving and Structures	$12.56
1318	Concrete Pavement Finishing Machine Operator	$15.48
1344	Crane Operator, Hydraulic 80 Tons or Less	$18.36
1342	Crane Operator, Lattice Boom 80 Tons or Less	$15.87
1343	Crane Operator, Lattice Boom Over 80 Tons	$19.38
1306	Crawler Tractor Operator	$15.67
1446	Directional Drilling Locator	$11.67
1445	Directional Drilling Operator	$17.24
1139	Electrician	$26.35
1347	Excavator Operator, 50,000 pounds or less	$12.88
1348	Excavator Operator, Over 50,000 pounds	$17.71
1150	Flagger	$9.45
1151	Form Builder/Setter, Structures	$12.87
1160	Form Setter, Paving & Curb	$12.94
1363	Foundation Drill Operator, Truck Mounted	$16.93
1369	Front End Loader Operator, 3 CY or Less	$13.04
1372	Front End Loader Operator Over 3 CY	$13.21
1172	Laborer, Common	$10.50
1175	Laborer, Utility	$12.27
1346	Loader/Backhoe Operator	$14.12
1187	Mechanic	$17.10
1380	Milling Machine Operator	$14.18
1390	Motor Grader Operator, Fine Grade	$18.51
1393	Motor Grader Operator, Rough	$14.63
1196	Painter, Structures	$18.34
1396	Pavement Marking Machine Operator	$19.17
1205	Pipelayer	$12.79
1384	Reclaimer/Pulverizer Operator	$12.88

Classification Number	Classification Description	Zone TX16
1500	Reinforcing Steel Worker	$14.00
1402	Roller Operator, Asphalt	$12.78
1405	Roller Operator, Other	$10.50
1411	Scraper Operator	$12.27
1194	Servicer	$14.51
1515	Spreader Box Operator	$14.04
1509	Structural Steel Worker	$19.29
1145	Traffic Signal/Light Pole Worker	$16.00
1440	Trenching Machine Operator, Heavy	$18.48
1609	Truck Driver Lowboy-Float	$15.66
1612	Truck Driver, Off Road Hauler	$11.88
1600	Truck Driver, Single Axel	$11.79
1606	Truck Driver, Single or Tandem Axel Dump Truck	$11.68
1607	Truck Driver, Tandem Axel Tractor with Semi Trailer	$12.81
1706	Welder	$15.97
1520	Work Zone Barricade Servicer	$11.85

ATTACHMENT 4 TO EXHIBIT 3

EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION
000---006
Standard Federal Equal Employment Opportunity
Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   d. "Minority" includes:

      (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

      (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

      (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

      (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North American and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area

(including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing contracts in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or any Federal procurement contracting officer. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

    a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out

the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral Process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and Collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling

any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impacts, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. In addition to the reporting requirements set forth elsewhere in this contract, the Contractor and the subcontractors holding subcontracts, not including material suppliers, of $10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form PR 1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.

ATTACHMENT 5 TO EXHIBIT 3

AFFIRMATIVE ACTION

SPECIAL PROVISION
000--004

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. **General.** In addition to the affirmative action requirements of the Special Provision titled "Standard Federal Equal Employment Opportunity Construction Contract Specifications" as set forth elsewhere in this proposal, the Bidder's attention is directed to the specific requirements for utilization of minorities and females as set forth below.

2. **Goals.**

   a. Goals for minority and female participation are hereby established in accordance with 41 CFR 60-4.

   b. The goals for minority and female participation expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation in each trade (per-cent)	**Goals for female participation in each trade (per-cent)**
See Table 1	6.9

   c. These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Standard Federal Equal Employment Opportunity Construction Contract Specifications Special Provision and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority and female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

d. A contractor or subcontractor will be considered in compliance with these provisions by participation in the Texas Highway-Heavy Branch, AGC, Statewide Training and Affirmative Action Plan. Provided that each contractor or subcontractor participating in this plan must individually comply with the equal opportunity clause set forth in 41 CFR 60-1.4 and must make a good faith effort to achieve the goals set forth for each participating trade in the plan in which it has employees. The overall good performance of other contractors and subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the goals contained in these provisions. Contractors or subcontractors participating in the plan must be able to demonstrate their participation and document their compliance with the provisions of this Plan.

3. Subcontracting. The Contractor shall provide written notification to the Department within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation pending concurrence of the Department in the award. The notification shall list the names, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. Covered Area. As used in this special provision, and in the contract resulting from this solicitation, the geographical area covered by these goals for female participation is the State of Texas. The geographical area covered by these goals for other minorities are the counties in the State of Texas as indicated in Table 1.

5. Reports. The Contractor is hereby notified that he may be subject to the Office of Federal Contract Compliance Programs (OFCCP) reporting and record keeping requirements as provided for under Executive Order 11246 as amended. OFCCP will provide direct notice to the Contractor as to the specific reporting requirements that he will be expected to fulfill.

Table 1

County	Goals for Minority Participation	County	Goals for Minority Participation
Anderson	22.5	Concho	20.0
Andrews	18.9	Cooke	17.2
Angelina	22.5	Coryell	16.4
Aransas	44.2	Cottle	11.0
Archer	11.0	Crane	18.9
Armstrong	11.0	Crockett	20.0
Atascosa	49.4	Crosby	19.5
Austin	27.4	Culberson	49.0
Bailey	19.5	Dallam	11.0
Bandera	49.4	Dallas	18.2
Bastrop	24.2	Dawson	19.5
Baylor	11.0	Deaf Smith	11.0
Bee	44.2	Delta	17.2
Bell	16.4	Denton	18.2
Bexar	47.8	DeWitt	27.4
Blanco	24.2	Dickens	19.5
Borden	19.5	Dimmit	49.4
Bosque	18.6	Donley	11.0
Bowie	19.7	Duval	44.2
Brazoria	27.3	Eastland	10.9
Brazos	23.7	Ector	15.1
Brewster	49.0	Edwards	49.4
Briscoe	11.0	Ellis	18.2
Brooks	44.2	El Paso	57.8
Brown	10.9	Erath	17.2
Burleson	27.4	Falls	18.6
Burnet	24.2	Fannin	17.2
Caldwell	24.2	Fayette	27.4
Calhoun	27.4	Fisher	10.9
Callahan	11.6	Floyd	19.5
Cameron	71.0	Foard	11.0
Camp	20.2	Fort Bend	27.3
Carson	11.0	Franklin	17.2
Cass	20.2	Freestone	18.6
Castro	11.0	Frio	49.4
Chambers	27.4	Gaines	19.5
Cherokee	22.5	Galveston	28.9
Childress	11.0	Garza	19.5
Clay	12.4	Gillespie	49.4
Cochran	19.5	Glasscock	18.9
Coke	20.0	Goliad	27.4
Coleman	10.9	Gonzales	49.4
Collin	18.2	Gray	11.0
Collingsworth	11.0	Grayson	9.4
Colorado	27.4	Gregg	22.8
Comal	47.8	Grimes	27.4
Comanche	10.9	Guadalupe	47.8

County	Goals for Minority Participation	County	Goals for Minority Participation
Hale	19.5	Lavaca	27.4
Hall	11.0	Lee	24.2
Hamilton	18.6	Leon	27.4
Hansford	11.0	Liberty	27.3
Hardeman	11.0	Limestone	18.6
Hardin	22.6	Lipscomb	11.0
Harris	27.3	Live Oak	44.2
Harrison	22.8	Llano	24.2
Hartley	11.0	Loving	18.9
Haskell	10.9	Lubbock	19.6
Hays	24.1	Lynn	19.5
Hemphill	11.0	Madison	27.4
Henderson	22.5	Marion	22.5
Hidalgo	72.8	Martin	18.9
Hill	18.6	Mason	20.0
Hockley	19.5	Matagorda	27.4
Hood	18.2	Maverick	49.4
Hopkins	17.2	McCulloch	20.0
Houston	22.5	McLennan	20.7
Howard	18.9	McMullen	49.4
Hudspeth	49.0	Medina	49.4
Hunt	17.2	Menard	20.0
Hutchinson	11.0	Midland	19.1
Irion	20.0	Milam	18.6
Jack	17.2	Mills	18.6
Jackson	27.4	Mitchell	10.9
Jasper	22.6	Montague	17.2
Jeff Davis	49.0	Montgomery	27.3
Jefferson	22.6	Moore	11.0
Jim Hogg	49.4	Morris	20.2
Jim Wells	44.2	Motley	19.5
Johnson	18.2	Nacogdoches	22.5
Jones	11.6	Navarro	17.2
Karnes	49.4	Newton	22.6
Kaufman	18.2	Nolan	10.9
Kendall	49.4	Nueces	41.7
Kenedy	44.2	Ochiltree	11.0
Kent	10.9	Oldham	11.0
Kerr	49.4	Orange	22.6
Kimble	20.0	Palo Pinto	17.2
King	19.5	Panola	22.5
Kinney	49.4	Parker	18.2
Kleberg	44.2	Parmer	11.0
Knox	10.9	Pecos	18.9
Lamar	20.2	Polk	27.4
Lamb	19.5	Potter	9.3
Lampasas	18.6	Presidio	49.0
LaSalle	49.4	Rains	17.2

County	Goals for Minority Participation	County	Goals for Minority Participation
Randall	9.3	Webb	87.3
Reagan	20.0	Wharton	27.4
Real	49.4	Wheeler	11.0
Red River	20.2	Wichita	12.4
Reeves	18.9	Wilbarger	11.0
Refugio	44.2	Willacy	72.9
Roberts	11.0	Williamson	24.1
Robertson	27.4	Wilson	49.4
Rockwall	18.2	Winkler	18.9
Runnels	20.0	Wise	18.2
Rusk	22.5	Wood	22.5
Sabine	22.6	Yoakum	19.5
San Augustine	22.5	Young	11.0
San Jacinto	27.4	Zapata	49.4
San Patricio	41.7	Zavala	49.4
San Saba	20.0		
Schleicher	20.0		
Scurry	10.9		
Shackelford	10.9		
Shelby	22.5		
Sherman	11.0		
Smith	23.5		
Somervell	17.2		
Starr	72.9		
Stephens	10.9		
Sterling	20.0		
Stonewall	10.9		
Sutton	20.0		
Swisher	11.0		
Tarrant	18.2		
Taylor	11.6		
Terrell	20.0		
Terry	19.5		
Throckmorton	10.9		
Titus	20.2		
Tom Green	19.2		
Travis	24.1		
Trinity	27.4		
Tyler	22.6		
Upshur	22.5		
Upton	18.9		
Uvalde	49.4		
Val Verde	49.4		
Van Zandt	17.2		
Victoria	27.4		
Walker	27.4		
Waller	27.3		
Ward	18.9		
Washington	27.4		

ATTACHMENT 6 TO EXHIBIT 3

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

By signing and submitting its proposal or bid, and by executing the DBA or Subcontract, each prospective DB Contractor and subcontractor (at all tiers) shall be deemed to have signed and delivered the following:

1. The prospective DB Contractor/subcontractor certifies, to the best of its 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 any 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, and shall include a copy of said form in its proposal or bid, or submit it with the executed DBA or Subcontract.

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. DB Contractor/subcontractor 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.

4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to

a civil penalty of not less than $10,000 and not more than $100,000 for each expenditure or failure.]

ATTACHMENT 7 TO EXHIBIT 3

COMPLIANCE WITH BUY AMERICA REQUIREMENTS

DB Contractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes that protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the contract price under the DBA.

Concurrently with execution of the DBA, DB Contractor has completed and submitted, or shall complete and submit, to TxDOT a Buy America Certificate, in format below. After submittal, DB Contractor is bound by its original certification.

A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.

At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT. A request for a waiver shall be treated as a Request for Change Order under Section 13.3 of the DBA.

BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed Subcontractors (at all tiers) that only domestic steel and iron will be used in the Project.

A. DB Contractor shall comply with the Federal Highway Administration ("FHWA") Buy America Requirements of 23 CFR 635.410, which permits FHWA participation in the DBA only if domestic steel and iron will be used on the Project. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1% of the Price.

B. A false certification is a criminal act in violation of 18 U.S.C. 1001. Should this DBA be investigated, DB Contractor has the burden of proof to establish that it is in compliance.

C. At DB Contractor's request, TxDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, DB Contractor certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available or not pursued by TxDOT.

PROPOSER	McCarthy Building Companies, Inc.
SIGNATURE	Michael J. McCarthy
NAME (printed or typed)	Michael J. McCarthy
TITLE	President, Texas Region
DATE	8/18/14

ATTACHMENT 8 TO EXHIBIT 3

CERTIFICATION OF NONDISCRIMINATION IN EMPLOYMENT

2004 Specifications

SPECIAL PROVISION

000---009

Certification of Nondiscrimination in Employment

By signing this proposal, the bidder certifies that he has participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, or if he has not participated in a previous contract of this type, or if he has had previous contract or subcontracts and has not filed, he will file with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of $10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U. S. Department of Labor.

ATTACHMENT 9 TO EXHIBIT 3

ON-THE-JOB TRAINING PROGRAM
SPECIAL PROVISION

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

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

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

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

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

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

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

3. The OJT program trainee goal for this project is 6 trainees.

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

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

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

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

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

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

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

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

12. No employee shall be employed as a trainee in any classification in which he or she has successfully completed a training course leading to journey worker status or in which he or she has been employed as a journey worker. DB Contractor may satisfy this requirement by including appropriate questions in the employee application or by other suitable means.

Regardless of the method used, DB Contractor's records should document the findings in each case.

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

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

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

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

17. On a monthly basis, DB Contractor shall submit the Federal OJT Monthly Reporting Form to TxDOT's Strategic Project office(s) and the OCR. The monthly reporting form will include the number of hours trained and training status. If a trainee is terminated, DB Contractor is required to make a good faith effort to replace the trainee within 30 calendar days of the termination.

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

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

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

    No payment shall be made to DB Contractor if either the failure to provide the required training or the failure to hire the trainee as a journeyman is caused by DB Contractor and

evidences a lack of good faith on the part of DB Contractor in meeting the requirements of this Training Special Provision.

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

ATTACHMENT 10 TO EXHIBIT 3

NONDISCRIMINATION

2004 Specifications

SPECIAL PROVISION
000---2607
Nondiscrimination

Description. All recipients of federal financial assistance are required to comply with various nondiscrimination laws including Title VI of the Civil Rights Act of 1964, as amended, (Title VI). Title VI forbids discrimination against anyone in the United States on the grounds of race, color, or national origin by any agency receiving federal funds.

Texas Department of Transportation, as a recipient of Federal financial assistance, and under Title VI and related statutes, ensures that no person shall on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any Department programs or activities.

Definition of Terms. Where the term "contractor" appears in the following six nondiscrimination clauses, the term "contractor" is understood to include all parties to contracts or agreements with the Texas Department of Transportation.

Nondiscrimination Provisions. During the performance of this contract, the contractor agrees as follows:

(1) Compliance with Regulations: The Contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for

work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Texas Department of Transportation to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the Recipient, or the Texas Department of Transportation as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it or the Texas Department of Transportation may determine to be appropriate, including, but not limited to:

(a) withholding of payments to the contractor under the contract until the contractor complies, and/or

(b) cancellation, termination or suspension of the contract, in whole or in part.

(6) Incorporation of Provisions: The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Recipient or the Texas Department of Transportation may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Recipient to enter into such litigation to protect the interests of the Recipient, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT 4

TXDOT-PROVIDED APPROVALS

1. The Environmental Approval.

EXHIBIT 5

MAXIMUM PAYMENT SCHEDULE

Form M-2
Developer Draws/Cash Flow Tables (Development Price)
(all figures are in U.S. dollars, nominal)

Months after NTP 1	(A) Anticipated Draw / Cash Flow	(B) Cumulative Draw / Cash Flow		Cash Flow % of Cumulative Draw (A / B)		Cumulative Cash Flow % of Maximum Draw (B / Maximum Payment)
1	$1,500,000	$1,500,000		1.6%		1.6%
2	$1,500,000	$3,000,000		1.6%		3.1%
3	$5,223,720	$8,223,720		5.5%		8.6%
4	$4,209,220	$12,432,940		4.4%		13.0%
5	$2,710,220	$15,143,160		2.8%		15.9%
6	$5,152,720	$20,295,880		5.4%		21.3%
7	$7,642,500	$27,938,380		8.0%		29.3%
8	$2,275,000	$30,213,380		2.4%		31.6%
9	$5,193,173	$35,406,553		5.4%		37.1%
10	$6,393,342	$41,799,895		6.7%		43.8%
11	$8,586,011	$50,385,906		9.0%		52.8%
12	$5,141,011	$55,526,916		5.4%		58.1%
13	$3,611,588	$59,138,504		3.8%		61.9%
14	$4,045,654	$63,184,158		4.2%		66.2%
15	$2,989,739	$66,173,897		3.1%		69.3%
16	$4,020,077	$70,193,974		4.2%		73.5%
17	$5,128,492	$75,322,465		5.4%		78.9%
18	$4,883,492	$80,205,957		5.1%		84.0%
19	$5,036,487	$85,242,444		5.3%		89.3%
20	$4,686,487	$89,928,931		4.9%		94.2%
21	$3,627,421	$93,556,352		3.8%		98.0%
22	$1,291,419	$94,847,771		1.4%		99.3%
23	$321,250	$95,169,021		0.3%		99.7%
24	$321,250	$95,490,271		0.3%		100.0%
TOTALS	$95,490,271					
MAXIMUM PAYMENT	$95,490,271					

EXHIBIT 6

SPECIAL PROVISION FOR THE DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Disadvantaged Business Enterprise in Federal-Aid Construction for Design-Build Contracts

I. Description. The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal. For purposes of this Special Provision, the term "Contract" means the Design-Build Agreement (referred to sometimes as the "DBA"), the term "Bidder" means the selected Proposer for the Project, and the term "Contractor" means Design-Build Contractor under the DBA (referred to sometimes as the "DB Contractor").

A. Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.

1. Policy. It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, the Department's DBE Program, and the Contractor's approved DBE Performance Plan apply to this contract as follows:

a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.

b. The Contractor, sub-recipient 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.

c. The requirements of this Special Provision shall be physically included in any subcontract.

d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment, and that, if selected for the Design-Build Agreement, the Bidder will submit a DBE Performance Plan meeting the requirements set forth in Section A.2.m, below.

2. Definitions.

a. "Department" means the Texas Department of Transportation.

b. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

c. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.

d. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

e. "Disadvantaged Business Enterprise" or "DBE" means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26.

f. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

g. "Manufacturer" is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications."

h. "Regular Dealer" is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of regular dealers own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

i. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.

j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

k. "Race-conscious" means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.

l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

m. "DBE Performance Plan" means the plan submitted by the selected Bidder for a Design-Build project describing the methods to be employed for achieving TxDOT's DBE participation goals for the Project, including Bidder's exercise of good faith efforts. The selected Bidder's DBE Performance Plan is subject to TxDOT review, comment and approval prior to execution of the Design-Build Agreement. Each DBE Performance Plan must at a minimum include the following:

(1) Specific categories of services and work anticipated for DBE participation on the project;

(2) Identification of DBEs for performance of design work and other professional services, to the extent known at the date of submission of the DBE Performance Plan;

(3) Identification of DBEs for construction subcontracts, to the extent known at the date of submission of the DBE Performance Plan;

(4) Schedule for submission of DBE commitment agreements (using Form No. SMS. 4901), based on Bidder's initial project schedule; provided, however, that:

(a) DBE commitment agreements for design work and other professional services must be submitted at least 30 days prior to commencement of design work or other professional services for

the applicable segment or phase of work under the Design-Build Agreement; and

(b) DBE commitment agreements for construction subcontracts must be submitted at least 30 days prior to commencement of construction for the applicable segment or phase of the project under the Design-Build Agreement;

(5) Detailed description of:

(a) Good faith efforts the Bidder has exercised to identify DBEs and obtain commitment agreements prior to the date of submission of the DBE Performance Plan; and

(b) Good faith efforts that will be exercised by the Contractor following execution of the Design-Build Agreement to achieve the DBE participation goal for the project; and

(6) The name, experience, qualifications and responsibilities of the Bidder's Civil Rights/DBE Compliance Manager.

3. Contractor's Responsibilities. These requirements must be satisfied by the Contractor.

a. After conditional award of the contract, the Contractor shall, in consultation with the Department's Business Opportunity Programs (BOP) Office, develop and submit a DBE Performance Plan meeting the requirements set forth in A.2.m, above, and shall also submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department's Business Opportunity Programs (BOP) Office in Austin, Texas not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of the contract. The DBE Performance Plan is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the Design-Build Agreement.

b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902.

c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a

mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

(1) Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

(2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform the work items with its own forces.

(3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(4) Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiations includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(5) A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations,

or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.

(7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.

(8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(9) Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(10) If the Program Manager of the BOP Office determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the BOP Office.

d. Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

e. The preceding information shall be submitted directly to the Business Opportunity Programs Office, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.

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

i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

4. Eligibility of DBEs.

a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's BOP Office. An update of the Directory can be found on the Internet at http://www.txdot.gov/apps-cg/tucp/default.htm.

c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Sections A.3.a. and A.3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.

5. Determination of DBE Participation. When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:

a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

(1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

(a) In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

(b) In all cases, prime or other subcontractor assistance will not be credited toward the DBE goal.

(2) A DBE does not perform a CUF if 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.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that the DBE is not performing a CUF.

(3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

(a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.

(b) The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

(c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

(d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

(4) When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.

c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section A.5.c.(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2) If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section A.5.c.(2), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section A.5.c.(2).

(3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

(4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

6. Records and Reports.

a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form No. SMS.4903, "DBE or HUB Progress Report," is to be used for monthly reporting. Form No. SMS.4904, "DBE or HUB Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Business Opportunity Programs Office and a copy must be submitted to the Area Engineer. These forms may be obtained from the Department or may be reproduced by the Contractor. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.

b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE or HUB Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section A.3.c. of this Special Provision, must be submitted with the "DBE or HUB Final Report."

e. Provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose

work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

7. Compliance of Contractor.

a. To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

b. The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

c. Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

d. The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

e. When a DBE subcontractor, named in the commitment under Section A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. 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 DBE that was terminated, to the extent needed to meet the contract goal.

f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation. It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and

subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

1. The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form No. SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

2. The Contractor, sub-recipient 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.

EXHIBIT 7

DB CONTRACTOR'S DBE PERFORMANCE PLAN

[To be provided prior to execution of DBA]

TxDOT SH71 Express Project
McCarthy Construction
Disadvantaged Business Enterprise (DBE) Performance Plan

1.0 Program Overview

The SH71 Express Project Team is committed to implementing an effective Disadvantaged Business Enterprise Performance Plan (DBE Plan) that is consistent with the policy and procedures established by the U.S. Department of Transportation (DOT) and the Texas Department of Transportation (TxDOT). Pursuant to federal regulation 49 CFR Part 26, the SH71 Express Project Team will develop and implement a DBE Plan committed to maximizing the utilization of DBE firms on the SH71 Express Project.

This DBE Plan will satisfy the conditions established in the Design-Build and Capital Maintenance Agreement between McCarthy Construction and TxDOT. The SH71 Express Project Team believes the implementation of this DBE Plan will ensure that the Project Team will achieve and exceed the **4%** DBE goal of the price allocated for design services and **8%** DBE goal of the price allocated for construction services on the project. This DBE Plan is established to reflect the Project Team's good faith efforts in accordance with 49 CFR Part 26 Appendix A – Guidance Concerning Good Faith Efforts, to utilize DBE firms whenever possible on the project.

2.0 DBE Performance Plan

The implementation of the DBE Plan for the SH71 Express Project will include six (6) primary components, all equal in their individual importance. The following is a breakdown of the DBE Plan for the project:

2.1 <u>Program Administration</u>

In an effort to implement a comprehensive DBE Plan for the SH71 Express Project, the assigned DBE administrator will work in concert with his TxDOT counterparts to ensure the implementation of the program is consistent with the current efforts of the TxDOT DBE and SBE (small business enterprise) Program divisions to promote the utilization of DBE firms on TxDOT projects.

The Project Team member who has been assigned the duties as DBE administrator for the SH71 Express Project is Ruben Landa with K Strategies Group LLC. He has 15 years of program management and construction mitigation experience and has developed DBE programs for major capital projects, including the TxDOT Horseshoe Project in Dallas, Texas. As DBE

Administrator, Mr. Landa will manage the execution of the DBE Performance Plan and the Heavy Highway Capacity Building and Job Training Program.

To manage the ongoing successful execution of the DBE Plan, regular meetings will be held between the DBE Administrator and the TxDOT DBE/SBE Liaison to ensure the maximum sharing of information regarding all current and upcoming bid opportunities. This will allow Mr. Landa to plan accordingly when managing the communication of opportunities to DBE firms in the Austin/Central Texas region.

2.2 Public Outreach, Communications and Marketing

Public outreach will be a key component for increasing the utilization of DBE firms on the SH71 Express Project. The Project Team will offer various outreach and marketing activities aimed at increasing the awareness of bid opportunities available on the project. The activities will include the following:

- **Project Marketing Collateral –** Create informational materials to assist in marketing of the project and bid opportunities, including a bid opportunities and procurement schedule flier
- **Project Networking Events –** Coordinate a DBE kickoff event to build relationships between the Project Team and DBE firms and to share with DBE firms the bid opportunities that will be available on the project
- **Communication of Bid Opportunities to DBE Firms –** Communicate bid opportunities for the required trades and services on the project to DBE firms listed in the Texas Unified Certification Program (TUCP) DBE directory
- **Communication of Bid Opportunities to Local Advocacy Groups –** Communicate bid opportunities for the required trades and services on the project to Austin/Central Texas minority chambers, contractor associations and trade groups, including, but not limited to:
    - Austin Black Contractors Association
    - Austin Hispanic Contractors Association
    - Capital City African American Chamber of Commerce
    - Caldwell County Hispanic Chamber of Commerce
    - Greater Austin Asian American Chamber of Commerce
    - Greater Austin Hispanic Chamber of Commerce
    - San Marcos Hispanic Chamber of Commerce
    - Southwest Minority Supplier Development Council
    - Texas Association of Mexican American Chamber of Commerce
    - Texas Association of African American Chamber of Commerce

- **Public Outreach Events –** Participate in TxDOT, DBE, SBA and other trade fairs, expos, networkers, and other related events in an effort to promote the bid opportunities on the project to DBE firms
- **Project Presentations –** Develop and deliver presentations to minority chambers, contractor associations and trade groups, and other business organizations to increase awareness of the project and bid opportunities

2.3 Bid Opportunities, Procurement and Selection Process

One of the key components of this DBE Plan is the creation of bid opportunities for DBE firms. The Project Team will review all possible bid opportunities and devise a strategy for increasing the number of bid opportunities for DBE firms. The following are steps that the DBE administrator will take to assist in the increasing of opportunities for DBE firms:

- Assist in identifying the required trades, supplies and services needed for the project. Table 1.1 lists possible DBE design and construction services opportunities on the project:

Table 1.1 DBE Design and Construction Services Opportunities		
Asphalt Paving	Field Waste Disposal	PVC Pipe
Aviation Coordination	Frame & Grates	Public Involvement
Bridge Bearings	General Design Services	Railing & Fencing
Bridge Deck Sealing	Geotechnical Drilling	Reinforced Concrete Pipe
Bridge Deck Surface Treatment	Geotechnical Engineering	Reinforcing Steel
Bridge Equipment	Guard Rail	Safety & Training
Bridge Fencing	Inspection	Saw & Deal
Bridge Formwork	Jack & Bore	Security Services
Bridge Grinding	Janitorial	Sealed Expansion Joints
Civil Engineering	Land Surveying	Seeding & Sodding
Concrete Cure Materials	Landscape Architecture	Service Equipment
Concrete Mow Strip	Maintenance	Sidewalk & Curb
Concrete Pumping	Metal Beam Guard Rail	Slipform Barrier Rail
Concrete Ready Mix	Metal Pipe	Small Tools
Construction Supplies	Metal Railing	Soil Nail/Shotcrete
Compost	Milling	Stamped Concrete
Crash Cushions	Miscellaneous Concrete Work	Structural Field Welding
Demolition	Mowing	Sweeping
Design Quality Assurance	MSE Inlets & Grates	Telecommunications
Diversity Program Management	Office Interior Construction	Temp Shoring Materials

Document Shredding	Office Supplies	Temporary Yard Fencing
Drainage (Inlets/RCP)	Painting	Tie Bars
Engineering & Consulting	Pavement Design	Traffic Barrier
Environmental Compliance	Pavement Markings	Traffic Control Supply
Environmental HAZMAT	Paving Chairs	Traffic Striping
Erosion Control	Permanent Attenuators	Trucking
Facilities–Electrical	Photography	Utility Design
Fiber Expansion Joint Materials	Plotting Supplies	Utility Relocation
Field Office Trailers	Precast Concrete Rail	Waterproofing

- To-date, the following DBE firms have been selected to provide design and professional services on the SH71 Express Project:

Table 1.2 Selected Design / Professional Services Firms	
Company Name	**Service**
CAS Consulting and Services, Inc.	Civil Engineering
K Strategies Group LLC	Public Involvement / Diversity Program Management
MWM Design Group, Inc.	Land Surveying and Landscape Architects

- Assist with breaking down larger contracts to better fit the utilization of DBE firms
- Communicate and advertise bid opportunities to the general DBE community via various sources, that may include the following:
    1. Project Website
    2. Newsletters
    3. DBE Databases and Directories:
        - McCarthy internal database
        - KSG internal database
        - TUCP DBE directory
    4. Trade Publications and Local Newspapers
    5. Trade and Professional Organizations
    6. Local Minority Chambers and Contractor Associations
- Assist minority and women business enterprise (M/WBE) firms interested in bidding work on the project to understand the qualifications needed to become certified as a DBE and assist M/WBE firms in applying for DBE certification

2.4 Prime Contractor 2nd Tier DBE Subcontracting

The Project Team will emphasize the need to increase the utilization of DBE firms at the 2nd tier level and all other tier levels. Second-tier participation is key in helping emerging DBE firms to

grow. The following are steps the team will take to implement a prime contractor 2nd tier subcontracting program:

- Provide scope-specific vendor lists of capable and qualified DBE firms to potential prime contractor bidders, if needed
- Review prime contractors' schedule of DBE subcontractors to ensure DBE firms listed are certified.
- Verify DBE firms are listed in the TUCP directory. *(DBE firms must be certified at the time commitments are submitted, and DBE firms must be certified at time of subcontract execution to count toward DBE achievement.)*
- Track and monitor the participation of DBE firms on all contracts

2.5 Contract Compliance

A contract compliance program will be implemented to ensure all contractors are complying with the DBE Plan guidelines. The Project Team will conduct the following contract compliance activities:

- Ensure the timely submission of DBE commitment agreements using the appropriate forms.
- Ensure all DBE commitment agreements for design and construction services firms are submitted at least 30 days prior to the commencement of work
- Review monthly DBE reports submitted by contractors
- Provide assistance to interested firms in obtaining their DBE certification through the TUCP)
- Regularly verify certifications as valid and current, and notify DBE firms of upcoming DBE certification expiration
- Assist DBE firms with renewing their DBE certification
- Pursuant to the CUF Review requirements, we will conduct project site visits to ensure DBE firms are performing the scope of work listed on the DBE participation reports
- Conduct regular meetings with DBE firms on the project to discuss their contracts, performance or any concerns they may have.

2.6 Program Reporting and Records

SH71 Express Project Team will develop reports to monitor and track the utilization of DBE firms on the project. The reporting activities will include the following:

- Complete and submit all applicable monthly and final reports and standard forms required by TxDOT.

- Pursuant to the policy and procedures governing CUF reviews, records of each DBE firm participating on the project will be maintained
- Maintain records of documents and emails related to each solicitation
- Maintain records of documents on a contract-by-contract basis
- Maintain records of all documents and emails related to development, implementation and execution of each aspect of the DBE Plan

EXHIBIT 8

DB CONTRACTOR'S JOB TRAINING AND SMALL BUSINESS OPPORTUNITY PLAN

Heavy Highway Capacity Building & Job Training Programs

1.0 Program Overview

The purpose of the Heavy Highway Capacity Building and Job Training Programs is to provide an opportunity for candidates to grow the capacity of their business while learning or enhancing their skill set in one of the various critical craft fields so that they are positioned to perform work on the SH71 Express Project.

To ensure the maximum participation of all DBE firms on the SH71 Express Project, provisions of the Heavy Highway Capacity Building and Job Training Programs will be included in every subcontract issued. This will guarantee that all DBE firms on the project are aware of the opportunity to participate in the program.

2.0 Capacity Building Program

The Heavy Highway Capacity Building Program will provide DBE firms with the opportunity to enhance their overall business acumen by focusing on various fundamental business topics. Opportunities will be offered through the implementation of educational and capacity building training workshops. This program will offer topics aimed at educating DBE firms on how to conduct work within the parameters of a heavy highway project like the SH71 Express Project.

The implementation of the Heavy Highway Capacity Building Program for the SH71 Express Project will include eight (8) primary components, all equal in their individual importance. The following is a breakdown of the program:

2.1 Program Survey

Before implementing the Heavy Highway Capacity Building Program, a survey will be conducted and distributed to DBE firms in Austin/Central Texas to determine what their specific needs are. The SH71 Express Project Team will then select what these firms consider to be the most preferable subject matter to offer in training. The results of this survey will drive the curriculum for the workshop program that the Project Team is committed to offering to DBE firms interested in doing business on the SH71 Express Project and future TxDOT heavy highway projects.

2.2 Technical Disciplines

Once the results of the Heavy Highway Capacity Building Program survey have been compiled, the Project Team will offer workshops that will cover many of the business disciplines prominently needed to successfully manage and execute contracts on a heavy highway project, like the SH71 Express Project. The workshops that are selected for the Heavy Highway Capacity

Building Program will be based on the survey results and will include, but are not limited to, the following disciplines:

- Bonding and Surety Support
- Business and Construction Law
- Computer Technical Assistance
- Disadvantaged Business Enterprise (DBE) Programs
- Effective Business Accounting
- Effective Business Management
- Effective Construction Management
- Effective Project Management
- Financial and Capital Management
- How to Do Business on Heavy Highway Projects
- Leadership and Communications Skills
- Marketing and Business Development
- Peer Partnerships: Joint Ventures and Strategic Partnerships
- Safety and Security

2.3 Program Eligibility

DBE firms at any tier level on the SH71 Express Project will be eligible to participate in the Heavy Highway Capacity Building Program. The total number of participants will be dictated by the actual number of candidate firms performing work on the project that express interest in the program. The program will also be open to DBE firms who are interested in bidding work on the SH71 Express Project or any other TxDOT heavy highway project. Each DBE wishing to participate in the program will send an appropriate representative to each Capacity Building Program training workshop. This is a voluntary program, where participant contractors may enroll and withdraw at any time. The program is also offered to diverse firms who are not yet certified as a DBE, but are interested in becoming a certified DBE firm.

2.4 Program Marketing and Recruitment

The Project Team will collaborate with the TxDOT Technical Assistance Program (TAP) and advocacy partners, including local minority chambers of commerce, contractors associations and trade organizations as part of the successful execution of this program. Together, the Project Team and TAP will market to DBE firms the opportunity to participate in the project's Heavy

Highway Capacity Building Program at various DBE public outreach events, meetings, procurement roundtables, conferences, expos, project networkers, pre-bid conferences and one-on-one meetings.

2.5 Educational Providers and Trainers

As part of the program development, the Project Team will collaborate and partner with TxDOT TAP, who will provide the trainers that will be charged with educating the DBE firms enrolled in the program. The valuable education and experience shared by these providers will help expand and grow the technical capacity of DBE firms who attend. The information shared will also help better position the participating DBE firms with pursuing contract opportunities on the SH71 Express Project and other heavy highway projects in Texas.

2.6 Workshop Training Schedule

Once the Heavy Highway Capacity Building Program has been approved by TxDOT, preparation for a two-day workshop training series will begin. The schedule selected will allow the Project Team to get maximum exposure for the program, while creating multiple opportunities for DBE firms to participate in the program. Each workshop series will include a full day of workshops that will cover the most important disciplines selected from the initial program survey.

2.7 Program Administration

The Project Team will maintain organized and detailed records of the entire development, implementation and execution of the Heavy Highway Capacity Building Program. The records and documents compiled and recorded will illustrate a complete and thorough good-faith effort on the part of the Project Team to offer an effective Heavy Highway Capacity Building Program to DBE firms. Documents will include, but are not limited to:

- Program development survey/completion survey
- Program summary document
- Program training schedule
- Program fliers (kick-off event, training sessions and completion event)
- Program training RSVP, sign-in sheets and spreadsheets
- Records of all email distributions and communication pieces

2.8 Reporting Progress

The Project Team will then complete a summary report for the Heavy Highway Capacity Building Program that outlines the topics covered, participation, the overall results of the program and the results of survey that will be conducted at the conclusion of the program. The report will illustrate the overall success of the program and include spotlights and interviews

with participating DBE firms, as well as a summary of how participants and their businesses have benefited from their participation in the program. This report will be recorded in the project records and made available for TxDOT to review.

3.0 Job Training Program

The Project Team is committed to implementing a Heavy Highway Job Training Program aimed at providing specialized training for minority and women candidates in the critical craft fields. The goal of this program is to grow a diverse and skilled workforce for the SH71 Express Project as well as other TxDOT heavy highway projects. To ensure that every candidate in the Austin/Central Texas construction industry has the opportunity to participate in this effort, the provisions of the Job Training Program will be included in every subcontract issued so that all qualified candidates have the opportunity to enroll in the program.

The implementation of the Heavy Highway Job Training Program for the SH71 Express Project will include seven (7) primary components, all equal in their individual importance. The following is a breakdown of the program for the project:

3.1 Critical Crafts

The Project Team is prepared to implement a Heavy Highway Job Training Program for qualified minority and women candidates in a wide range of critical craft fields that are commonly utilized for the successful construction of a heavy highway project. The training provided will help build a pool of capable, diverse candidates that can be added to the skilled workforce needed on the SH71 Express Project and other TxDOT heavy highway projects. The critical craft training could include, but is not limited to, the following fields:

- Asphalt Distributor Operator
- Asphalt Paving Machine Operator
- Broom or Sweeper Operator
- Concrete Paving Finish Machine Operator
- Concrete Saw Operator
- Crawler Tractor Operator
- Crane Operator, Lattice Boom (80T or Less)
- Crane Operator, Lattice Boom (Over 80T)
- Crane Operator, Hydraulic (80T or Less)
- Excavator Operator (50,000 lbs. or Less)
- Excavator Operator (Over 50,000 lbs.)

- Found Drill Operator, Crawler Mounted
- Found Drill Operator, Truck Mounted
- Front End Loader (3CY or Less)
- Front End Loader (Over 3CY)
- Loader/Backhoe Operator
- Milling Machine Operator
- Motor Grader Operator, Fine Grade
- Motor Grader Operator, Rough
- Pavement Marking Machine Operator
- Reclaimer/Pulverizer Operator
- Reinforcing Steel Worker
- Roller Operator (Other)
- Roller Operator (Asphalt)
- Scraper Operator
- Small Slipform Machine Operator
- Spreader Box Operator
- Welder

3.2 Program Eligibility

Disadvantaged, minority and women candidates are required to have a background in the vertical or horizontal construction industry. Those who enroll in the Heavy Highway Job Training Program will be required to complete program documentation showing their experience and involvement in the construction industry. They will also be required to complete and sign documentation affirming their commitment to participating in the program. The critical craft training is on a volunteer basis, but candidates must commit to participating in all training sessions and completing the set curriculum for those training sessions. To qualify and be considered for employment opportunities in one of the critical craft fields, the candidate must complete the program and receive a certificate of completion stating they are trained and have successfully completed the training in select critical craft fields.

3.3 Program Marketing and Recruitment

The Project Team will work closely with our advocacy partners, including local minority chambers of commerce, contractors associations and trade organizations in the communication and marketing of the Heavy Highway Job Training Program to disadvantaged, minority and women candidates in the Austin/Central Texas construction industry. Together we will market to candidates the opportunity to participate in the Heavy Highway Job Training Program at various DBE public outreach events, meetings, procurement roundtables, conferences, expos, project networkers and pre-bid conferences. We will also share the opportunities with the memberships and contacts of our advocacy partners and local and state agencies.

3.4 Educational Trainers

The Heavy Highway Job Training Program trainers and educators will be made up of McCarthy Construction personnel who are specialized experts in the various critical craft fields. These trainers will be skilled professionals who possess years of experience and are well-qualified to conduct these trainings. McCarthy Construction will also provide the equipment, resources and location for these trainings. It should be noted that the training will not take place on the SH71 Express Project site.

3.5 Job Training Schedule

Once the Heavy Highway Job Training Program has been approved by TxDOT, preparation for a training program will begin, including the selection of the critical crafts that will be offered in the program. Once the critical crafts have been selected, a schedule will be implemented based on input from those who will be charged with conducting the training and also based on the SH71 Express Project schedule.

3.6 Program Administration

The Project Team will maintain organized and detailed records of the entire development, implementation and execution of the Heavy Highway Job Training Program. The records and documents compiled and recorded will illustrate a complete and thorough good-faith effort on the part of the Project Team to offer an effective job training program to disadvantaged, minority and women candidates. Documents will include but are not limited to:

- Program summary document
- Program training schedule
- Program fliers (kick-off event, training sessions and completion event)
- Program training RSVP, sign-in sheets and spreadsheets
- Records of all email distributions and communication pieces

3.7 Reporting Progress

The Project Team will complete a summary report for the Heavy Highway Job Training Program that outlines the critical craft training provided, participation and the overall results of the program. The report will illustrate the overall success of the program. This report will be recorded in the project records and made available to TxDOT for review.

4.0 Overall Program Timelines

To ensure the effective and timely implementation of the Heavy Highway Capacity Building and Job Training Programs, the following general timeline of activities and tasks has been developed:

ACTIVITY	DATES
Capacity Building Program Development	Fall 2014
Job Training Program Development	Fall 2014
Capacity Building Program Survey Execution	Fall 2014
Capacity Building Program Survey Results	Fall 2014
SH71 Express Project Partners Breakfast	Fall 2014
SH71 Express Project DBE Kick-Off Event	Fall 2014
Capacity Building Workshop – Day #1	Fall 2014 / Winter 2015
Capacity Building Workshop – Day #2	Fall 2014 / Winter 2015
Job Training Program – Week #1	Fall 2014 / Winter 2015
Job Training Program – Week #2	Fall 2014 / Winter 2015

EXHIBIT 9

FORM OF PERFORMANCE BOND

[To be replaced with actual Performance Bond]

SH 71 TOLL LANES PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to McCarthy Building Companies, Inc, a Missouri corporation ("Principal"), a Design-Build Agreement for the SH 71 Toll Lanes Project, duly executed and delivered as of August 29, 2014 (the "DBA"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the DBA, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the DBA Documents.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $3,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the DBA Documents, including any and all amendments and supplements thereto, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect. Obligee shall release this Bond upon the occurrence of all of the conditions to release set forth in Section 8.1.3 of the DBA.

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

1. The DBA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBA.

2. This Bond specifically guarantees the performance of each and every obligation of Principal under the DBA Documents, as they may be amended and supplemented, including but not limited to, its liability for Liquidated Damages as specified in the DBA Documents, but not to exceed the Bonded Sum.

3. The guarantees contained herein shall survive Final Acceptance of the Work called for in the DBA Documents with respect to those obligations of Principal which survive such Final Acceptance.

4. Whenever Principal shall be, and is declared by Obligee to be, in default under the DBA Documents, provided that Obligee is not then in material default thereunder, Surety shall promptly:

a. arrange for the Principal to perform and complete the DBA; or

b. complete the Project in accordance with the terms and conditions of the DBA Documents then in effect, through its agents or through independent contractors; or

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work, through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBA, and pay to the Obligee the amount of damages as described in Paragraph 6 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or

d. waive their right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which they may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 4.d of this Bond, and the Obligee refuses the payment tendered or Sureties has denied liability, in whole or in part, without further notice, the Obligee shall be entitled to enforce any remedy available to the Obligee.

6. After the Obligee has terminated the Principal's right to complete the DBA, and if Surety elects to act under Subparagraph 4.a, 4.b, or 4.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the DBA, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the DBA. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBA, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design, engineering, professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 4 of this Bond; and

c. Liquidated Damages under the DBA.

7. No alteration, modification or supplement to the DBA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond provided

that the aggregate dollar amount of TxDOT-Directed Changes, without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $9,549,027.13. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

8. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

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

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 20__.

Principal: _____
By:_____
Its: _____
(Seal)

Surety: _____
By:_____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of Bond: **Performance Bond**

dated effective

(MONTH-DAY-YEAR)

McCarthy Building Companies, Inc.

, as Principal,

(PRINCIPAL)

and by , as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

The Bonded Sum hereunder shall increase to the amount of $83,309,391.66 (ONE HUNDRED PERCENT (100%) of the Price allocable to Construction Work on the Project) effective upon issuance by the Obligee of NTP2 under the DBA.

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

This rider
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____

(PRINCIPAL)

_____

(SURETY)

By: _____

Attorney in fact

EXHIBIT 10

FORM OF PAYMENT BOND

[To be replaced by actual Payment Bond]

SH 71 TOLL LANES PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to McCarthy Building Companies, Inc., a Missouri corporation ("Principal"), a Design-Build Agreement for the SH 71 Toll Lanes Project, duly executed and delivered as of August 29, 2014 (the "DBA"), on the terms and conditions set forth therein; and

WHEREAS, upon award of the DBA, Principal is required to furnish a bond (this "Bond") guaranteeing payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the initial amount of $3,000,000, subject to increase in accordance with the NTP2 Rider attached hereto (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall fail to pay any valid claims by Subcontractors and Suppliers with respect to the Work, then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this Bond shall be null and void upon the occurrence of all of the conditions to release set forth in Section 8.1.4 of the DBA.

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

1. The DBA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBA.

2. No alteration, modification or supplement to the DBA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes without the Surety's prior written consent thereto having been obtained, does not increase the Price by more than $9,549,027.13. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

3. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

4. This Bond shall inure to the benefit of Subcontractors and Suppliers with respect to the Work so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 20__.

Principal: _____
By:_____
Its: _____
(Seal)

Surety: _____
By:_____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

NTP2 RIDER

To be attached to and form a part of

Bond No.

Type of Bond: **Payment Bond**

dated effective

(MONTH-DAY-YEAR)

McCarthy Building Companies, Inc.

, as Principal,

(PRINCIPAL)

and by , as Surety,

in favor of **Texas Department of Transportation**

(OBLIGEE)

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

The Bonded Sum hereunder shall increase to the amount of $83,309,391.66 (ONE HUNDRED PERCENT (100%) of Price allocable to Construction Work on the Project) effective upon issuance by the Obligee of NTP2 under the DBA.

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

This rider
is effective

(MONTH-DAY-YEAR)

Signed and Sealed

(MONTH-DAY-YEAR)

(PRINCIPAL)

By: _____

(PRINCIPAL)

_____

(SURETY)

By: _____

Attorney in fact

EXHIBIT 11

FORM OF RETAINAGE BOND

CONTRACT NO. _____
COUNTY _____
BOND NO. _____

RETAINAGE BOND

KNOW ALL PERSONS BY THESE PRESENTS that CONTRACTOR, as Principal, and the undersigned surety, are held and firmly bound unto the State of Texas as Obligee, in the amount of FOUR PERCENT (4%) of the total amount paid the Principal under the contract, including any increases due to change orders, quantities of work, new items of work, or other additions as the Obligee may pay under the DBA, lawful money of the United States, well and truly to be paid to the State of Texas, and we bind ourselves, our heirs, successors, executors, and administrators jointly and severally, firmly by these presents.

Whereas, the Principal has entered into the above-referenced contract with the State of Texas, attached hereto, and

Whereas, under the contract, the Principal is required before commencing the work provided for in the contract to execute a bond in the above amount.

Now therefore, the condition of this obligation is such that if the Principal and its heirs, successors, executors, and administrators shall fully indemnify and save harmless the State of Texas from all costs and damages from valid claims filed within 90 days of notification of final acceptance of the work under the contract by any person or entity against the contract funds, and shall fully reimburse the State of Texas for amounts owed by the **Principal** to the State of Texas with regard to the contract after notification of final acceptance of the work, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Provided further, that the said surety(s) for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in anyway affect its obligation on this bond. The surety(s) does hereby waive notice of any such change, extension of time, alteration or addition, to the terms of the contract or to the work or to the Specifications, unless otherwise specified in the contract.

WITNESS our hand this, _____day of_____, 20____.

CONTRACTOR

_____	By: _____
SURETY (Print Firm Name and Seal)	(Title)
*By:_____	By: _____
(Title)	(Title)
_____	_____
SURETY (Print Firm Name and Seal)	**SURETY** (Print Firm Name and Seal)
*By:_____	*By: _____
(Title)	(Title)

*NOTE: A Power of Attorney, showing that the surety officer or Attorney-In-Fact has authority to sign such obligation, must be impressed with the corporate seal and attached behind the Payment Bond in each contract.

This form has been approved by the ATTORNEY GENERAL OF TEXAS & TEXAS DEPARTMENT OF INSURANCE.

EXHIBIT 12

FORM OF WARRANTY BOND

[To be replaced with actual Warranty Bond]

SH 71 TOLL LANES PROJECT

Bond No. _____

WHEREAS, the Texas Department of Transportation ("Obligee"), has awarded to McCarthy Building Companies, Inc., a Missouri corporation ("Principal"), a Design-Build Agreement for the SH 71 Toll Lanes Project, duly executed and delivered as of August 29, 2014 (the "DBA"), on the terms and conditions set forth therein; and

WHEREAS, as a condition to Final Acceptance of the Project and release of the Performance Bond and Payment Bond for such Segment, Principal is required to furnish a bond (this "Bond") guaranteeing the faithful performance of its obligations under the DBA Documents after Final Acceptance, including payment of claims by Subcontractors and Suppliers.

NOW, THEREFORE, Principal and _____, a _____ ("Surety"), an admitted surety insurer in the State of Texas, are held and firmly bound unto Obligee in the amount of $19,098,054.25 (the "Bonded Sum"), for payment of which sum Principal and Surety jointly and severally firmly bind themselves and their successors and assigns.

THE CONDITION OF THIS BOND IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the DBA Documents, as they may be amended or supplemented, including without limitation the fulfillment of all Warranties, and payment of claims by Subcontractors and Suppliers, then the obligations under this Bond shall be null and void; otherwise this Bond shall remain in full force and effect, it being expressly understood and agreed that the liability of Surety for any and all claims hereunder shall in no event exceed the Bonded Sum.

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

1. The DBA Documents are incorporated by reference herein. Capitalized terms not separately defined herein have the meanings assigned such terms in the DBA.

2. This Bond shall inure to the benefit of all Subcontractors and Suppliers with respect to the Work, other than entities having an equity interest in Principal, so as to give a right of action to such persons and their assigns in any suit brought upon this Bond.

3. The guarantees contained herein shall survive Final Acceptance.

4. Whenever Principal shall fail to pay the lawful claims of any of the persons identified in Paragraph 2 above with respect to the Work, excluding entities having an equity interest in Principal, then Surety shall pay for the same in an amount not to exceed the Bonded Sum.

5. Whenever Principal shall be, and is declared by the Obligee to be, in default with respect to its obligations under the DBA Documents, provided that the Obligee is not then in material default thereunder, Surety shall promptly take one of the following actions with the consent of the Obligee:

a. arrange for Principal to perform and complete the DBA;

b. complete the Work in accordance with the terms and conditions of the DBA Documents then in effect, through its agents or through independent contractors;

c. obtain bids or negotiated proposals from qualified contractors acceptable to the Obligee for a contract for performance and completion of the Work (as defined in the DBA), through a procurement process approved by the Obligee, arrange for a contract to be prepared for execution by the Obligee and the contractor selected with the Obligee's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the DBA, and pay to the Obligee the amount of damages as described in Paragraph 7 of this Bond in excess of the unpaid balance of the Price incurred by the Obligee resulting from the Principal's default; or

d. waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances, (i) after investigation, determine the amount for which it may be liable to the Obligee and, as soon as practicable after the amount is determined, tender payment therefore to the Obligee, or (ii) deny liability in whole or in part and notify the Obligee citing reasons therefore.

6. If Surety does not proceed as provided in Paragraph 5 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Obligee to Surety demanding that Surety perform its obligations under this Bond, and the Obligee shall be entitled to enforce any remedy available to the Obligee. If Surety proceeds as provided in Subparagraph 5.d of this Bond, and the Obligee refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice the Obligee shall be entitled to enforce any remedy available to the Obligee.

7. After the Obligee has terminated the Principal's right to complete the DBA, and if Surety elects to act under Subparagraph 5.a, 5.b, or 5.c above, then the responsibilities of Surety to the Obligee shall not be greater than those of the Principal under the DBA, and the responsibilities of the Obligee to Surety shall not be greater than those of the Obligee under the DBA. To the limit of the Bonded Sum, but subject to commitment of the unpaid balance of the Price to mitigation costs and damages on the DBA, Surety is obligated without duplication for:

a. the responsibilities of the Principal for correction of defective work and completion of the Work;

b. actual damages, including additional legal, design professional and delay costs resulting from Principal's default, and resulting from the actions or failure to act of Surety under Paragraph 5 of this Bond; and

c. Liquidated Damages under the DBA.

8. No alteration, modification or supplement to the DBA Documents or the nature of the work to be performed thereunder, including without limitation any extension of time for performance, shall in any way affect the obligations of Surety under this Bond, provided that the aggregate dollar amount of TxDOT-Directed Changes, without the Sureties' prior written consent thereto having been obtained, does not increase the Price by more than $19,098,054.25. Surety waives notice of any alteration, modification, supplement or extension of time other than Change Orders for TxDOT-Directed Changes in excess of such amount.

9. Correspondence or claims relating to this Bond should be sent to Surety at the following address:

_____
_____
_____

IN WITNESS WHEREOF, Principal and Surety have caused this Bond to be executed and delivered as of _____, 20__.

Principal: _____
By:_____
Its: _____
(Seal)

Surety: _____
By:_____
Its: _____
(Seal)

[*ADD APPROPRIATE SURETY ACKNOWLEDGMENTS*]

SURETY

_____
or secretary attest

By:_____
Name
Title:
Address:

EXHIBIT 13

FORM OF GUARANTY

GUARANTY

THIS GUARANTY (this "Guaranty") is made as of _____, 20__ by _____, a _____ ("Guarantor"), in favor of the TEXAS DEPARTMENT OF TRANSPORTATION, an agency of the State of Texas ("TxDOT").

R E C I T A L S

A. McCarthy Building Companies, Inc., as design-build contractor ("DB Contractor"), and TxDOT are parties to that certain Design-Build Agreement (the "DBA") pursuant to which the DB Contractor has agreed to design and construct the Project. Initially capitalized terms used herein without definition will have the meaning given such term in the DBA Documents.

B. To induce TxDOT to (i) enter into the DBA; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

C. DB Contractor is a Missouri corporation. The Guarantor is _____. The execution of the DBA by TxDOT and the consummation of the transactions contemplated thereby will materially benefit Guarantor. Without this Guaranty, TxDOT would not have entered into the DBA with DB Contractor. Therefore, in consideration of TxDOT's execution of the DBA and consummation of the transactions contemplated thereby, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. Guaranty. Guarantor guarantees to TxDOT and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the DB Contractor arising out of, in connection with, under or related to the DBA Documents. The obligations guaranteed pursuant to this Guaranty are collectively referred to herein as the "Guaranteed Obligations."

2. Unconditional Obligations. This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 21, this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against the DB Contractor. If any payment made by the DB Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full

force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations hereunder will not be released, discharged or otherwise affected by: (a) any change in the DBA Documents or the obligations thereunder, or any insolvency, bankruptcy or similar proceeding affecting the DB Contractor, Guarantor or their respective assets, and (b) the existence of any claim or set-off which the DB Contractor has or Guarantor may have against TxDOT, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit. This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 21.

3. <u>Independent Obligations</u>. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the DB Contractor and if any default occurs hereunder, a separate action or actions may be brought and prosecuted against Guarantor whether or not the DB Contractor is joined therein. TxDOT may maintain successive actions for other defaults of Guarantor. TxDOT's rights hereunder will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been paid and fully performed.

a. Guarantor agrees that TxDOT may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against the DB Contractor. Guarantor hereby waives the right to require TxDOT to proceed against the DB Contractor, to exercise any right or remedy under any of the DBA Documents or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between the DB Contractor and TxDOT or their respective successors and assigns, with respect to any of the DBA Documents or the Guaranteed Obligations; (ii) any waiver of or failure to enforce any of the terms, covenants or conditions contained in any of the DBA Documents or any modification thereof; (iii) any release of the DB Contractor from any liability with respect to any of the DBA Documents; or (iv) any release or subordination of any collateral then held by TxDOT as security for the performance by the DB Contractor of the Guaranteed Obligations.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any of the DBA Documents or the pursuit by TxDOT of any remedies which TxDOT either now has or may hereafter have with respect thereto under any of the DBA Documents.

d. Notwithstanding anything to the contrary contained elsewhere in this Guaranty, Guarantor's obligations and undertakings hereunder are derivative of, and not in excess of, the obligations of the DB Contractor under the DBA. Accordingly, in the event that the DB Contractor's obligations have been changed by any modification, agreement or stipulation between DB Contractor and TxDOT or their respective successors or assigns, this Guaranty shall apply to the Guaranteed Obligations as so changed.

4. <u>Liability of Guarantor.</u>

a. TxDOT may enforce this Guaranty upon the occurrence of a breach by the DB Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between TxDOT and the DB Contractor with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. TxDOT, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability hereunder, from time to time may (i) with respect to the financial obligations of the DB Contractor, if and as permitted by the DBA, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of TxDOT in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that TxDOT may have against any such security, as TxDOT in its discretion may determine, and (vi) exercise any other rights available to it under the DBA Documents.

d. This Guaranty and the obligations of Guarantor hereunder will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the DBA Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating

thereto; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the DBA Documents or any agreement or instrument executed pursuant thereto; (iii) TxDOT's consent to the change, reorganization or termination of the corporate structure or existence of the DB Contractor; (iv) any defenses, set-offs or counterclaims that the DB Contractor may allege or assert against TxDOT in respect of the Guaranteed Obligations, except as provided in Section 21.

5. Waivers. To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of: (a) any right to require TxDOT to proceed against the DB Contractor or any other Person or to proceed against or exhaust any security held by TxDOT at any time or to pursue any right or remedy under any of the DBA Documents or any other remedy in TxDOT's power before proceeding against Guarantor; (b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, the DB Contractor or any other Person or the failure of TxDOT to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person; (c) any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof; (d) any right or defense arising out of an election of remedies by TxDOT even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the DB Contractor by the operation of law or otherwise; (e) all notices to Guarantor, to the Purchasers, to any Purchaser or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of the DB Contractor under any of the DBA Documents, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto, except the notice required in Section 16.1.3 of the DBA; (f) any defense based upon any act or omission of TxDOT which directly or indirectly results in or aids the discharge or release of the DB Contractor, Guarantor or any security given or held by TxDOT in connection with the Guaranteed Obligations; and (g) any and all suretyship defenses under applicable law.

6. Waiver of Subrogation and Rights of Reimbursement. Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against the DB Contractor that arises from the performance of Guarantor hereunder, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of TxDOT against the DB Contractor, or any other security or collateral that TxDOT now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor is subordinated to all of the Guaranteed Obligations. Whenever and for so long as the DB Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by DB Contractor or any shareholders, partners, members, joint venturers of DB Contractor to Guarantor without the prior written consent of TxDOT. Any payment by DB Contractor or any

shareholders, partners, members, joint venturers of DB Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for TxDOT.

7. Waivers by Guarantor if Real Property Security. If the Guaranteed Obligations are or become secured by real property or an estate for years, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

a. TxDOT may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by the DB Contractor.

b. If TxDOT forecloses on any real property collateral pledged by the DB Contractor:

(1) The amount of the Guaranteed Obligation may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(2) TxDOT may collect from Guarantor even if TxDOT, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the DB Contractor.

This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the Guaranteed Obligations secured by real property.

8. Cumulative Rights. All rights, powers and remedies of TxDOT hereunder will be in addition to and not in lieu of all other rights, powers and remedies given to TxDOT, whether at law, in equity or otherwise.

9. Representations and Warranties. Guarantor represents and warrants that:

a. it is a [corporation/limited liability company] duly organized, validly existing, and in good standing under the laws of the State of [_____] and qualified to do business and is in good standing under the laws of the State of Texas;

b. it has all requisite corporate power and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the [certificate of incorporation or by-laws] of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the DBA Documents or referred to therein, the financial status of the DB Contractor and the ability of the DB Contractor to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the DBA Documents and is fully informed of the remedies TxDOT may pursue, with or without notice to the DB Contractor or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of the DB Contractor and will keep itself fully informed as to all aspects of the financial condition of the DB Contractor, the performance of the Guaranteed Obligations of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of TxDOT to disclose any matter, fact or thing relating to the business, operations or conditions of the DB Contractor now known or hereafter known by TxDOT;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date hereof; and

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Authority which challenges the validity or enforceability of this Guaranty.

10. <u>Governing Law.</u> The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of Texas applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of Texas with regard to this Guaranty. The venue for any action regarding this Guaranty shall be Travis County, Texas.

11. <u>Entire Document.</u> This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersede all negotiations,

representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by TxDOT referring specifically to this Guaranty, and then only to the specific purpose, extent and interest so provided.

12. Severability. If any provision of this Guaranty is determined to be unenforceable for any reason by a court of competent jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties and all of the provisions not deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

13. Notices. Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and delivered by personal service (including express or courier service), by electronic communication, whether by telex, telegram or telecopying (if confirmed in writing sent by registered or certified mail, postage prepaid, return receipt requested), or by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to TxDOT: Texas Department of Transportation
7600 Chevy Chase Drive, Building II Suite 400
Austin, Texas 78752
Attention: Mr. Frank Holzmann, P.E.
Telephone _____
Email: frank.holzmann@txdot.gov

With copies to: Texas Department of Transportation
Office of General Counsel
125 East 11th Street
Attention: John J. Ingram, Esq.
Telephone: (512) 463-8630
Email: jack.ingram@txdot.gov

If to Guarantor: _____
_____
_____
Attention:_____
Telephone:_____
Facsimile:_____

Either Guarantor or TxDOT may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 13 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five (5) days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions of the various Sections of this Guaranty have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and TxDOT, but is not assignable by Guarantor without the prior written consent of TxDOT, which consent may be granted or withheld in TxDOT's sole discretion. Any assignment by Guarantor effected in accordance with this Section 15 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

16. Construction of Agreement. Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

17. No Waiver. Any forbearance or failure to exercise, and any delay by TxDOT in exercising, any right, power or remedy hereunder will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

18. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty.

(a) The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the DB Contractor or by any defense which the DB Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. TxDOT is not obligated to file any claim relating to the Guaranteed Obligations if the DB Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of TxDOT so to file will not affect Guarantor's obligations under this Guaranty.

(b) Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and TxDOT that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve the DB Contractor of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay TxDOT, or allow the claim of TxDOT in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to TxDOT without demand reasonable attorneys' fees and all costs and other expenses (including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by TxDOT in enforcing,

collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

20. **Joint and Several Liability**. If the Guarantor is comprised of more than one individuals and/or entities, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to the DB Contractor and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

21. **Defenses**. Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to the DB Contractor under the DBA except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the DB Contractor and any other defense to formation of the DBA, and (c) defenses available to the DB Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand except for the notice provided in Section 16.1.3 of the DBA.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first written above.

_____
a _____

By: _____
Name:_____
Title:_____

By: _____
Name:_____
Title:_____

EXHIBIT 14

INSURANCE COVERAGE REQUIREMENTS

1. Builder's Risk Insurance During Construction

At all times during the period from the commencement of Construction Work until Final Acceptance, DB Contractor shall procure and keep in force a policy of builder's risk insurance as specified below.

(a) The policy shall provide coverage for "all risks" of direct physical loss or damage to the portions or elements of the Project under construction, excluding terrorism but including the perils of earthquake, earth movement, flood, storm, tempest, windstorm, hurricane, and tornado and subsidence; shall contain extensions of coverage that are typical for a project of the nature of the Project; and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) The policy shall cover (i) all property, roads, buildings, structures, fixtures, materials, supplies, foundations, pilings, machinery and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation into the works located at the Site, in storage, including off-site storage, or in the course of inland transit on land to the Site, and (ii) unless covered by commercial general liability insurance pursuant to Section 2 of this Exhibit 14, all existing property and improvements that are within the construction work zone or are or will be affected by the construction Work, including a sublimit not less than $2,500,000 for existing property in the construction work zone.

(c) The policy shall provide coverage per occurrence up to the full replacement cost of the covered property loss, including a sublimit acceptable to TxDOT for demolition and debris removal, without risk of co-insurance; provided, however, that the policy may also include the following sublimits: (i) for earth movement and flood, not less than $5,000,000 per occurrence and $10,000,000 aggregate; (ii) for the peril of Named Windstorm, not less than $10,000,000; (iii) for building ordinance compliance, not less than $5,000,000; (iv) for "soft cost expense," not less than $5,000,000; and (v) for professional fees, a sublimit acceptable to TxDOT but not less than $1,000,000.

(d) TxDOT shall be named as additional insured on the policy. DB Contractor also may, but is not obligated to, include other Subcontractors as insureds. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other insureds. DB Contractor shall be named as the named insured under the policy.

(e) The policy shall include coverage for (i) foundations, including pilings, but excluding normal settling, shrinkage, or expansion; (ii) physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery; (iii) plans, blueprints and specifications; (iv) physical

damage resulting from faulty work or faulty materials, but excluding the cost of making good such faulty work or faulty materials; (v) physical damage resulting from design error or omission but excluding the cost of making good such design error or omission; (vi) demolition and debris removal coverage; (vii) the increased replacement cost due to any change in applicable codes or other Laws; (viii) expense to reduce loss; (ix) building ordinance compliance, with the building ordinance exclusion deleted; and (x) "soft cost expense" (including costs of Governmental Approvals, mitigation costs, attorneys' fees, and other fees and costs associated with such damage or loss or replacement thereof).

(f) The policy shall provide a deductible or self-insured retention not exceeding $1,000,000 per occurrence.

2. Commercial General Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force in its own name, or cause to be procured and kept in force in its name, commercial general liability insurance as specified below. During any period in which DB Contractor, at its election, maintains in effect builder's third party liability insurance pursuant to Section 3 of this Exhibit 14, the commercial general liability insurance policy need not duplicate the builder's third party liability insurance coverage.

(a) The policy shall be written on an occurrence basis in form reasonably acceptable to TxDOT. The policy shall contain extensions of coverage that are typical for a project of the nature of this Project, and shall contain only those exclusions that are typical for a project of the nature of this Project.

(b) The policy shall insure against the legal liability of the DB Contractor and the insureds named in Section 2(d), relating to claims by third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, and shall include the following specific coverages:

(i) Contractual liability;

(ii) Premises/operations;

(iii) Independent contractors;

(iv) Products and completed operations (with acknowledgement that the Project constitutes the premises and not a product), with coverage to remain in place post-completion for 10 years or through the applicable statute of limitations or repose period;

(v) Broad form property damage, providing the same coverage as ISO form CG 00 01 04 13 provides;

(vi) Hazards commonly referred to as "XCU", including explosion, collapse and underground property damage;

(vii) Fellow employee coverage for supervisory personnel;

(viii) Incidental medical malpractice;

(ix) No exclusion for work performed within 50 feet of a railroad;

(x) Policy shall contain no exclusion for claims arising from Professional Services, including engineering, architecture and surveying, with regard to any claims related to (A) DB Contractor's supervision, coordination, management, scheduling of the Project or other similar services or (B) the products and completed operations coverage. In lieu of complying with this requirement, DB Contractor may show proof of Contractor's Professional Liability Insurance with a limit of at least $10,000,000 per claim and aggregate. If this requirement is met through provision of Contractor's Professional Liability Insurance, such coverage shall be carried for the Project Term and for 5 years thereafter, however, in no event shall this requirement extend beyond10 years total;

(xi) Broad named insured endorsement; and

(xii) Non-owned automobile liability, unless covered by the automobile liability policy pursuant to Section 4 of this Exhibit 14.

(c) The policy shall have limits of not less than $50,000,000 per occurrence and in the aggregate per policy period. Such limits may be provided through umbrella insurance and shall be shared by all insured and additional insured parties and shall reinstate annually, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) TxDOT, the Indemnified Parties and the City of Austin (with regard to the coverage provided to the City of Austin, only in connection with work on the part of the shared use path located on City of Austin property) shall be named as additional insureds, using ISO Forms CG 20 33 07 04 and CG 20 37 07 04 or their equivalents. The policy shall be written so that no act or omission of a named insured shall vitiate coverage of the other additional insureds.

(e) The policy shall provide one of the following, as DB Contractor selects:

(i) A deductible or self-insured retention not exceeding $250,000 per occurrence; or

(ii) A deductible (but not self-insured retention) of $1,000,000 per occurrence but only if the primary policy and any excess policy are written to obligate the insurers to compensate the claimant on a first dollar basis.

3. Builder's Third Party Liability Insurance

During any period in which Construction Work is performed, DB Contractor, at its election, may procure and keep in effect builder's third party liability insurance, as specified below, in lieu of commercial general liability insurance coverage for construction activities (but DB Contractor shall maintain commercial general liability insurance coverage for all non-construction-related activities).

(a) The policy shall insure against liability to third parties for accidental death, bodily injury or illness, property damage, personal injury and advertising injury, arising out of the construction work or other work of construction or the improvements under construction. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) DB Contractor shall continue the policy in effect for not less than the applicable Warranty Term.

(c) The policy shall otherwise include the same provisions as described for the commercial general liability insurance under Sections 2(b) through (e) of this Exhibit 14.

4. Automobile Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force comprehensive, business, or commercial automobile liability insurance as specified below.

(a) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work, including loading and unloading. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(b) DB Contractor shall be the named insured under its automobile liability policy, and the City of Austin shall be named as an additional insured (with regard to the coverage provided to the City of Austin, only in connection with work on the part of the shared use path located on City of Austin property).

(c) DB Contractor's policy shall have a single limit per policy period of not less than $50,000,000 any one claim and in the aggregate, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

(d) Each policy shall provide a deductible or self-insured retention not exceeding $250,000 per occurrence.

5. Pollution Liability Insurance

DB Contractor shall procure and maintain during the Term insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by DB Contractor, its agents, representatives, employees or subcontractors. Coverage shall be at least broad as:

(a) Contractors Pollution Liability with coverage for losses caused by pollution conditions that arise from the operations of the DB Contractor described under the scope of services of this DBA:

(i) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; medical monitoring,

(ii) Property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

(iii) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

(iv) Non-owned Disposal Site coverage for specified sites (by endorsement) if contractor is disposing of waste(s).

(b) Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of Covered Operations.

(c) Contractor's Pollution Liability (occurrence form): DB Contractor shall maintain limits no less than $10,000,000 per occurrence/$10,000,000 aggregate for the term of the DBA.

(d) The policy shall provide a deductible or self-insured retention not exceeding $250,000 per occurrence.

(e) TxDOT and the City of Austin shall be named as additional insureds on the policy (with regard to the coverage provided to the City of Austin, only in connection with work on the part of the shared use path located on City of Austin property). The specific scope of services required under the DBA shall be listed on the certificate of insurance.

6. Professional Liability Insurance

At all times that Professional Services are rendered under the DBA respecting design and construction of the Project until five years after the Professional Services have concluded for the Project, DB Contractor shall procure and keep in force, or cause others to procure and keep in

force, professional liability insurance; provided, however, that the total term of such professional liability coverage need not extend beyond ten (10) years. Such professional liability insurance may be procured and maintained through either (i) a Project-specific professional liability insurance policy covering the Lead Designer and all other Professional Service firms performing work on the Project, or (ii) individual practice policies covering each Professional Service firm as specified in subparagraphs (a), (b), and (c) below. If DB Contractor chooses to procure and maintain a Project-specific professional liability policy as allowed for above, it must have minimum limits of $10,000,000 per claim and in the aggregate, written for the entire 10-year period, and a deductible or self-insured retention of no greater than $1,000,000 per claim. If DB Contractor chooses to allow each Professional Service firm to carry its own professional liability insurance, DB Contractor must provide TxDOT with proof of coverage from each such firm as follows:

(a) for those firms with an estimated contract value of $5,000,000 or more, an annual practice policy with a limit of $10,000,000 per claim and in the aggregate, and a deductible or self-insured retention of no greater than $1,000,000 per claim;

(b) for those firms with an estimated contract value of $2,000,000 or greater but less than $5,000,000, an annual practice policy with a limit of $5,000,000 per claim and in the aggregate, and a deductible or self-insured retention of no greater than $250,000 per claim; and

(c) for those firms with an estimated contract value of below $2,000,000, an annual practice policy with a limit of $2,000,000 per claim and in the aggregate, and a deductible or self-insured retention of no greater than $100,000 per claim.

Any insurance policy listed in subparagraphs (a), (b) and (c) must be continuously carried for the period of Professional Services and five years thereafter, but in no event longer than 10 years.

7. Workers' Compensation Insurance

At all times when Work is being performed by any employee of DB Contractor, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance for the employee in conformance with applicable Law. DB Contractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(a) A voluntary compensation endorsement;

(b) An alternative employer endorsement; and

(c) An endorsement extending coverage to all states operations on an "if any" basis.

8. Employer's Liability Insurance

At all times during the performance of the Work, DB Contractor shall procure and keep in force, or cause to be procured and kept in force, employer's liability insurance as specified below.

(a) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of DB Contractor working on or about any Site or otherwise engaged in the work.

(b) DB Contractor shall be the named insured, and the City of Austin shall be named as an additional insured (with regard to the coverage provided to the City of Austin, only in connection with work on the part of the shared use path located on City of Austin property).

(c) The policy shall have a limit of not less than $25,000,000 per accident and in the aggregate during the period of insurance, and may be included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

9. Railroad Protective Liability Insurance

DB Contractor shall procure and keep in force, or cause to be procured and kept in force, railroad protective liability insurance as may be required by any railroad in connection with any Work performed across, under or adjacent to the railroad's tracks or railroad right-of-way. All insurance policies shall be in a form acceptable to the operating railroad and shall name the railroad as named insured. Copies of all insurance policies shall be submitted to TxDOT prior to any entry by DB Contractor upon operating railroad property. The City of Austin shall be named as an additional insured on any such policy (with regard to the coverage provided to the City of Austin, only in connection with work on the part of the shared use path located on City of Austin property). In the event any agreement between TxDOT and a railroad includes railroad protective insurance requirements applicable to the Work, DB Contractor shall procure and keep in force or cause to be procured and kept in force, insurance meeting such requirements.

10. Subcontractors' Insurance

(a) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that performs work on the Site and is not otherwise covered by a DB Contractor-provided liability insurance policy to provide commercial general liability insurance that complies with Section 9 of the DBA, with commercially reasonable limits and deductibles or self-insured retentions. In no event shall the limit of such policy be less than $1,000,000 per occurrence and aggregate. DB Contractor shall cause each such Subcontractor that provides such insurance to include each of the Indemnified Parties and the City of Austin as additional insureds under such Subcontractor's liability insurance policies (with regard to the coverage provided to the City of Austin, only in connection with work on the part of the shared use path located on City of Austin property). Such insurance need not be Project-specific, but the aggregate shall apply on a per-project basis. TxDOT shall have the right to contact the Subcontractors directly in order to verify the above coverage.

(b) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor that has vehicles on the Site or uses vehicles in connection with the work to procure and keep in force, comprehensive, business, or commercial automobile liability insurance meeting the requirements as specified below.

(i) Each policy shall cover accidental death, bodily injury and property damage liability arising from the ownership, maintenance or use of all owned, non-owned and hired vehicles connected with performance of the Work. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project, and shall contain only those exclusions that are typical for a project of the nature of the Project.

(ii) Each such Subcontractor shall be the named insured under its respective automobile liability policy.

(iii) Each policy shall have a combined single limit per policy period of not less than $1,000,000 combined single limit.

(iv) Each policy shall include each of the Indemnified Parties as additional insureds.

(c) At all times when Work is being performed by any employee of a Subcontractor, DB Contractor shall cause subcontractor to procure and keep in force, or cause to be procured and kept in force, a policy of workers' compensation insurance, including employer's liability, in conformance with applicable Law. Subcontractor shall be the named insured on these policies. The workers' compensation insurance policy shall contain the following endorsements:

(i) A voluntary compensation endorsement;

(ii) An alternative employer endorsement; and

(iii) An endorsement extending coverage to all states operations on an "if any" basis.

(d) At all times during the performance of the Work, DB Contractor shall cause each Subcontractor to procure and keep in force employer's liability insurance as specified below.

(i) The policy shall insure against liability for death, bodily injury, illness or disease for all employees of subcontractor working on or about any Site or otherwise engaged in the work.

(ii) Subcontractor shall be the named insured.

(iii) The policy shall have an employer's liability limit of not less than $1,000,000 per accident and in the aggregate during the period of insurance, and may be

included in an umbrella insurance combined with such other insurance that this Exhibit 14 stipulates may be similarly included.

EXHIBIT 15

FORM OF DRAW REQUEST AND CERTIFICATE

Draw Request # _____ Date: _____
month/day/year

Texas Department of Transportation
[Address]

"Entry Required in Cell"

A. Draw Request for Work performed for the period: _____ to _____
month/day/year month/day/year

B. Original DBA Amount	
C. Approved Change Order Amounts	
D. Revised DBA Amount (B+C)	$0.00
E. Cumulative Amount Earned to Date	
F. Cumulative Maximum Payment Schedule Allowance (this period from Exhibit 5)	
G. Cumulative Amount of Previous Draw Requests	
H. Amount Qualified for Payment this Period (Lesser of "E-G" or "F-G ") (includes Electronic Communications Allowance and Landscaping allowance work described below)	$0.00
I. Retainage Percentage this Draw Request for Record Drawings (1% of "H")	$0.00
J. Deduction from progress payment per Section 12.3.2 of the DBA (this Draw Request)	$
K. Total deductions ("I" + "J")	$

L. Current Amount Due ("H" - "K") $

Printed Name DB Contractor's Project Manager	Signature	month/day/year
Printed Name TxDOT Program Manager	Signature	month/day/year
Printed Name Texas Department of Transportation	Signature	month/day/year

(Note: See Sheet 4 of 4 for Draw Request Checklist)

DRAW REQUEST NO. _____ CERTIFICATION

The undersigned hereby certifies that (choose applicable bracketed language):

- Except as specifically noted in this certification, all Work, including that of designers, Subcontractors, and Suppliers, which is the subject of this Draw Request has been checked and/or inspected by [the Design Quality Assurance Manager with respect to Professional Services] [the Construction Quality Acceptance Manager with respect to construction Work];

- Except as specifically noted in this certification, all [Professional Services] [construction Work] which is the subject of this Draw Request conforms to the requirements of the DBA Documents;

- [The Design Quality Management Plan] [The Construction Quality Management Plan] and all of the measures and procedures provided therein are functioning properly and are being followed; and

- [The Professional Services percentages and construction percentages indicated are accurate and correct.] [All quantities for which payment is requested on a unit price basis are accurate.]

Exceptions:
_____
_____
_____

_____ _____
Name: _____ Date
[DQAM] [CQAM] Representative

Seal:

DRAW REQUEST CHECKLIST

Enclosed with this cover sheet are the following:

- ☐ Monthly progress report as described in Section 2.1.1.2.4 of the Technical Provisions
- ☐ Certifications by the Design Quality Assurance Manager and the Construction Quality Acceptance Manager;
- ☐ Draw Request data sheet(s) and documents that support and substantiate the amount requested;
- ☐ An approved Schedule of Values or an approved revised Schedule of Values as described in Section 2.1.1.2.3 of the Technical Provisions;
- ☐ Traffic incident reports;
- ☐ DBE utilization reports;
- ☐ Cash flow curves and comparison to the Maximum Payment Schedule; and
- ☐ An approved Project Status Schedule Update as described in Section 2.1.1.2.2 of the Technical Provisions.

EXHIBIT 16

FORM OF CHANGE ORDER

CHANGE ORDER REQUEST NO. _____ CONTRACT NO. _____

SECTION I

Originator:_____ Date: _____

- **Title: _____**

Contract No: _____

- **Company Name: _____**

DESCRIPTION:

_____
_____
_____
_____
_____

SCOPE:

_____
_____
_____
_____
_____

REASON FOR REQUEST FOR CHANGE ORDER:

_____
_____
_____
_____
_____

_____
DB Contractor Project Manager Date

SECTION II

The total amount of this Change Order is $ _____. Documentation supporting the Change Order is attached as Exhibits _____ through _____.

Payment Schedule Items Added/Deducted:

Activity No.	Description	Amount
_____	_____	_____

This Change Order Request is for (check the applicable categories below):

- _____ A lump sum, negotiated price Change Order (provide information in Section IIA below)
- _____ A unit price/quantities Change Order (provide information in Section IIB below)
- _____ A Time and Materials Change Order (provide information in Section IIC below)

Section IIA

Lump sum price is $_____

Section IIB

UNIT PRICE ITEM	UNIT PRICE	QUANTITY	PRICE (Unit Price x Quantity)

Total of all items in above Table: $_____

Section IIC

Summary of Change Order Request by Categories: [Additives/(Credits)]

A. DB Contractor Labor (construction)
   1. Wages[1] $ _____ _____

	2.	Labor benefits[2] (55% of A.1)	$ _____
B.	DB Contractor and Subcontractor Labor (professional services)		
	1.	Wages (Raw)	$ _____
	2.	Labor benefits[1] (145% of B.1, which includes overhead and profit)	$ _____
	3.	Off-duty peace officers and patrol cruisers[1]	$ _____
C.	Materials (with taxes, freight and discounts)		$ _____
D.	Equipment[2]		$ _____
E.	Subcontracts (Time and Materials cost)		$ _____
F.	Utility Direct Costs		$ _____
G.	Overhead and Profit		
	1.	Labor (25% of A.1)	$ _____
	2.	Traffic Control (5% of B.3)	$ _____
	3.	Materials (15% of C)	$ _____
	4.	Subcontracts (5% of E)	$ _____
	5.	Utility Direct Costs (5% of F)	$ _____
H.	Grand Total		$ _____

[1] Premiums on public liability and workers' compensation insurance, Social Security and unemployment insurance taxes.
[2] Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 13.7.3 of the DBA.

SECTION III

The status of Substantial Completion is as follows:

- ❑ Unaffected by this Change Order Proposal
- ❑ Affected by (increasing) (decreasing) the date of Substantial Completion by _____calendar days.
- ❑ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

The status of Final Acceptance is as follows:

- ❑ Unaffected by this Change Order Proposal
- ❑ Affected by (increasing) (decreasing) the date of Final Acceptance by _____calendar days.
- ❑ Affected by (increasing) (decreasing) the _____ Float by _____ calendar days.

Accordingly, the summary of the dates of Substantial Completion and Final Acceptance and Float are as follows:

1. Substantial Completion: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

2. Final Acceptance: _____
   (+ or - _____ days from base of _____ calendar days after NTP1)

3. Number of days of Project Float _____

Justification for Change Order with reference to the DBA:

_____

_____

_____

The above three sections represent a true and complete summary of all aspects of this Request for Change Order.

This Request for Change Order includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event, occurrence or matter giving rise to the proposed change.

If the foregoing Request for Change Order includes claims of Subcontractors or Suppliers, the undersigned have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount.

_____

DB Contractor Authorized Representative

Date: _____

SECTION IV (Reviewed by Program Manager)

_____ _____

Program Manager (Design-Build Agreement) **Date**

Comments:

_____

_____

_____

SECTION V (Reviewed by TxDOT Project Manager)

_____

TxDOT Project Manager

Date_____

Comments:

_____

_____

_____

SECTION VI (Approval by TxDOT Program Director and District Engineer)

_____

TxDOT Program Director **Date**

_____

TxDOT District Engineer **Date**

Comments:

_____

_____

_____

SECTION VII (Reviewed by FHWA Project Representative)

_____

FHWA Project Representative **Date**

Comments:

_____

_____

_____

EXHIBIT 17

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

TxDOT Authorized Representative(s)

TxDOT's Executive Director, Chief Planning and Projects Officer and their designees.

DB Contractor's Authorized Representative(s)

Kurt Knebel

EXHIBIT 18

PROGRESS PAYMENT CERTIFICATE

WHEREAS, the Texas Department of Transportation ("TxDOT") and McCarthy Building Companies, Inc. ("DB Contractor") are parties to a Design-Build Agreement (the "DBA") to design and construct the SH 71 Toll Lanes Project (the "Project") in Travis County, Texas; and

WHEREAS, TxDOT has issued to DB Contractor a Certificate of Final Acceptance for the design and construction of the Project; and

WHEREAS, pursuant to the Maximum Payment Schedule set forth in the DBA, TxDOT's payments to DB Contractor for design and construction of the Project must continue beyond the date of Final Acceptance of DB Contractor's design and construction work by TxDOT; and

WHEREAS, TxDOT has determined that there is no dispute that it owes $_____ to DB Contractor, to be paid in accordance with the schedule described in Section 12.4.6 of the DBA; and

NOW THEREFORE, TxDOT acknowledges its obligation, subject to Texas law, to pay DB Contractor a total of $_____, and hereby certifies that it will pay that obligation by monthly payments as set forth on Attachment 1.

Executed as of the ____.day of _____, ____.

TEXAS DEPARTMENT OF TRANSPORTATION

_____

Executive Director

ATTACHMENT A TO EXHIBIT 18

PAYMENT DATE	PAYMENT AMOUNT

EXHIBIT 19

KEY SUBCONTRACTORS

List of Key Subcontractors by discipline or role:

– Project Management: **McCarthy Building Companies, Inc.**

– Lead Design Firm: **LAN, Inc.**

– Quality Control Management: **McCarthy Building Companies, Inc.**

– Quality Assurance Management: **EJES, Inc. and Professional Services Industries, Inc.**

– Key Task Leader – Geotechnical: **Holt Engineering, Inc.**

– Key Task Leader – Hydraulics and Hydrology: **LAN, Inc.**

– Key Task Leader – Structural: **LAN, Inc.**

– Key Task Leader – Environmental: **LAN, Inc.**

– Key Task Leader – Utilities: **CAS Consulting & Services, Inc.**

EXHIBIT 20

WARRANTY PERFORMANCE AND MEASUREMENT TABLE BASELINE

(Attached)

DESIGN-BUILD AGREEMENT

SH 71 TOLL LANES PROJECT

EXHIBIT 20

WARRANTY PERFORMANCE AND MEASUREMENT TABLE BASELINE

Warranty Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	WARRANTY TERM	TxDOT INSPECTION AND MEASUREMENT METHOD	PERFORMANCE REQUIREMENT
1) ROADWAY					
				Unless stated otherwise, measurements shall be conducted using procedures, techniques, and measuring equipment consistent with TxDOT's *Pavement Management Information System Rater's Manual.*	
	1.2	Pavement	5 years, except for mill and overlay sections having a 2-year performance Warranty Term per Note 1	**b) Ruts – Mainlanes, shoulders & ramps** Depth as measured using an automated device in compliance with TxDOT Standards.	No wheel path length with ruts greater than ¼" in depth
				10ft straight edge used to measure rut depth for localized areas.	No length with depth of rut at any location greater than 0.5"
				c) Ride quality Measurement of International Roughness Index (IRI) according to TxDOT standard Tex-1001-S, Operating Inertial Profilers and Evaluating Pavement Profiles	• Mainlanes, ramps – no results greater than 95" per mile • Frontage roads – no results greater than 120" per mile
				3-ft straightedge used to measure discontinuities	No individual discontinuities greater than 0.75"
				d) Failures Instances of failures exceeding the failure criteria set forth in the TxDOT PMIS Rater's Manual, including potholes, base failures, punchouts and jointed concrete pavement failures	No occurrence of failure
				f) Skid resistance ASTM E274/E274M-11 Standard Test Method for Skid Resistance Testing of Paved Surfaces at 50 MPH using a full scale smooth tire meeting the requirements of ASTM E524-08 .	• All half-mile sections are to meet a minimum average Skid Number of 30. • All half-mile sections are to meet a minimum average Skid Number of 30. • Comply with the requirements of the Wet Weather Accident Reduction Program.
	1.3	Crossovers and other paved areas	2 years	**a) Potholes**	No potholes of low severity or higher
				b) Base failures	No base failures of low severity or higher
	1.4	Joints in concrete	5 years	Visual inspection of joints	No length with unsealed joints greater than ¼"
				Measurement of joint width and level difference of two sides of joints	No joint width more than 1" or faulting more than ¼"

Warranty Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	WARRANTY TERM	TxDOT INSPECTION AND MEASUREMENT METHOD	PERFORMANCE REQUIREMENT
	1.5	Curbs	2 years	Visual inspection	Less than 1” deflection out of alignment over 10’
2) DRAINAGE					
	2.2	Drainage treatment devices	2 years	Visual inspection	Devices functioning correctly with means of operation displayed
	2.3	Travel Way	2 years	Visual inspection of water on surface	The travel way is free from water to the extent that such water would represent a hazard by virtue of its position and depth.
	2.4	Discharge systems	2 years	Visual inspection and records	Surface water discharge systems perform their proper function and discharge to groundwater and waterways complies with the relevant permits and other legal requirements.
3) STRUCTURES					
	3.1	Structures having an opening measured along the centre of the roadway of more than 20 feet between undercopings of abutments or springlines of arches or extreme ends of openings or multiple boxes	5 years	Inspection and assessment in accordance with the requirements of federal National Bridge Inspection Standards (NBIS) of the Code of Federal Regulations, 23 Highways – Part 650, the TxDOT Bridge inspection Manual, and the Federal Administration’s Bridge Inspector’s Reference Manual	No occurrences of condition rating below seven for any deck, superstructure, substructure or components as required in the TxDOT Bridge Inspection Manual.
	3.3	Non-bridge class culverts	5 years	Visual inspection	Non-bridge-class culverts are free of: • defects in sealant to movement joints • scour damage
	3.4	Gantries and high masts	5 years	Visual inspection	Sign signal gantries, high masts are structurally sound and free of defects in surface protection systems
	3.5	Load ratings	5 years	Load rating calculations in accordance with the Manual for Bridge Evaluation and the TxDOT Bridge Inspection Manual. Load restriction requirements as per the TxDOT Bridge Inspection Manual	All structures maintain the design load capacity.
4) PAVEMENT MARKINGS, OBJECT MARKERS, BARRIER MARKERS AND DELINEATORS					
	4.1	Pavement markings	2 years	a) Markings General - Physical measurement Profile Markings -Visual inspection	No Length with no more than 5% loss of area of material at any point Length performing its intended function and compliant with relevant regulations

Warranty Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	WARRANTY TERM	TxDOT INSPECTION AND MEASUREMENT METHOD	PERFORMANCE REQUIREMENT
	4.2	Raised reflective markers	2 years	Visual inspection	Markings are functioning as intended
5) GUARDRAILS, SAFETY BARRIERS AND IMPACT ATTENUATORS					
	5.1	Guard rails and safety barriers	2 years	Visual inspection	All guardrails, safety barriers, concrete barriers, etc. are free of construction defects and remain at correct height.
	5.2	Impact attenuators	2 years	Visual inspection	All impact attenuators remain as installed.
6) TRAFFIC SIGNS					
	6.1	General – All Signs	2 years	**a) Retroreflectivity** Coefficient of retro reflectivity **b) Face damage** Visual inspection **c) Placement** Visual inspection	No signs with reflectivity below the requirements of TxDOT's TMUTCD and free from structural and electrical defects No signs with face damage greater than 5% of area, unless caused by a third party Sign mounting posts are structurally sound and rust free
7) TRAFFIC SIGNALS					
	7.2	Soundness	2 years	**a) Structural soundness** Visual inspection **b) Electrical soundness**	Traffic Signals, Pedestrian Elements and Vehicle Detectors are structurally and electrically sound Inspection records showing compliance
8) LIGHTING					
	8.1	Roadway Lighting – General	2 years		Columns are upright, correctly founded, visually acceptable and structurally sound
	8.3	Electrical Supply	2 years	Testing to meet NEC regulations, visual inspection	Electricity supply, feeder pillars, cabinets, switches and fittings are electrically, mechanically and structurally sound and functioning
	8.5	High Mast Lighting	2 years		All winch and safety equipment is correctly functioning. (for structural requirements refer to Element Category 3)
9) FENCES, WALLS AND SOUND ABATEMENT					
	9.2	Construction	5 years	Structural assessment if visual inspection warrants	Integrity and structural condition of the fence is maintained
12) EARTHWORKS, EMBANKMENTS AND CUTTINGS					
	12.1	Slope Failure	5 years	Visual inspection by geotechnical specialist and further tests as recommended by the specialist	All structural failures of the embankment and cut slopes of the Facility are repaired
13) ITS EQUIPMENT					
	13.5	Vehicle Detection Equipment	2 years	Defect measurement dependent on equipment	All equipment free of defects and operational problems such as; • Inoperable loops.

Warranty Performance and Measurement Table Baseline

ELEMENT CATEGORY	REF	ELEMENT	WARRANTY TERM	TxDOT INSPECTION AND MEASUREMENT METHOD	PERFORMANCE REQUIREMENT
				Traffic Detector Loops: Loop circuit's inductance to be > 50 and < 1,000 micro henries. Insulation resistance to be > 50 meg ohms.	• Malfunctioning camera controllers.
14) PLANT MATERIALS					
	14.1	Trees, Shrubs, and Other Plant Materials	1 year	Visual inspection of trees, shrubs, and other plant materials	All trees, shrubs, and other plant materials shall be in healthy condition. • Remove dead plants within ten (10) Business Days of discovery. • Replace such plants during the next planting season.

Note 1: Where indicated, mill and overlay sections specified in Technical Provisions Section 1.2.1 shall meet performance requirements for a period of 2 years from Final Acceptance (rather than for the 5-year Warranty Term generally applicable to the element category).