

EXHIBIT 1

ABBREVIATIONS AND DEFINITIONS

[included with PPA body]

EXHIBIT 2

IFA-PROVIDED APPROVALS

Those Governmental Approvals set forth in Table 7-1 of the Technical Provisions

EXHIBIT 3

KEY PERSONNEL

[NAMES OF APPROVED KEY PERSONNEL TO BE INSERTED PRIOR TO EXECUTION]

Key Personnel Position:

Individual's Name:

Project Manager	[_____]
Design Manager	[_____]
Structural Design Lead Engineer	[_____]
Construction Manager	[_____]
Design-Build Coordinator	[_____]
Design Quality Manager	[_____]
Construction Quality Manager	[_____]
Maintenance of Traffic Design-Build Coordinator	[_____]
Structural Steel Painting Manager	[_____]
Public Information Coordinator	[_____]
Environmental Compliance Manager	[_____]
Safety Manager	[_____]
Project Scheduler	[_____]

EXHIBIT 4

BONDS

- 4-A FORM OF PERFORMANCE BOND
- 4-B FORM OF PAYMENT (LABOR AND MATERIAL) BOND
- 4-C FORM OF WARRANTY BOND

EXHIBIT 4-A

FORM OF PERFORMANCE BOND

Bond No. _____

For

SHERMAN MINTON CORRIDOR PROJECT

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions (“IFA” or Obligee”) has awarded to **[NTD: INSERT DESIGN-BUILD CONTRACTOR’S NAME]** (the “Design-Build Contractor” or “Principal”), a Public-Private Agreement (as amended from time to time, the “Agreement”), which Agreement is specifically incorporated by reference in this Bond, for the design and construction of the Sherman Minton Corridor Project (the “Project”);

AND WHEREAS, as a condition issuance of the NTP, Principal is required to furnish a bond (this “Bond”);

NOW THEREFORE, We the undersigned Principal and _____ (the “Surety” or “Co-Sureties”) are firmly bound and held unto the Obligee, in the penal sum of _____ Dollars (\$ _____) **[NTD: AMOUNT TO BE INSERTED BASED ON 100% OF CONTRACT PRICE]** good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. If the Principal shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and work under the Agreement, including any and all amendments, supplements, and alterations made to the Agreement as therein provided, on the Principal’s part to be kept and performed at the time and in the manner therein specified, if the Principal shall indemnify and save harmless the Obligee, its directors, officers and agents, as therein stipulated, and if the Principal shall reimburse upon demand of the Obligee any sums paid the Principal which exceed the final payment determined to be due upon completion of the Project, then these presents shall become null and void; otherwise they shall remain in full force and effect.

2. The obligations covered by this Bond specifically include liability for liquidated damages and warranties as specified in the Agreement, but not to exceed the bonded sum.

3. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

5. Whenever the Principal shall be, and is declared by IFA to be, in default under the Agreement, provided that IFA is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work covered by this Bond in accordance with the terms and conditions of the Agreement then in effect, or

(c) select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the Agreement then in effect, using a contractor or contractors approved by IFA as required by the Agreement (provided, however, that the Surety may not select the Principal or any affiliate of the Principal to complete the work for and on behalf of the Surety without IFA's express written consent), arrange for a contract meeting the requirements of the Agreement between such contractor or contractors and IFA, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the contract price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum.

6. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Oblige and claimants will have no obligation to deal

with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____."

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ on this _____ day of _____, A.D., 20__.

Principal (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: () _____

Surety (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: () _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 4-B

FORM OF PAYMENT BOND

Bond No. _____

For

SHERMAN MINTON CORRIDOR PROJECT

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions ("IFA" or Obligee") has awarded to **[NTD: INSERT DESIGN-BUILD CONTRACTOR'S NAME]** (the "Design-Build Contractor" or "Principal"), a Public-Private Agreement (as amended from time to time, the "Agreement"), which Agreement is specifically incorporated by reference in this Bond, for the design and construction of the Sherman Minton Corridor Project (the "Project");

AND WHEREAS, as a condition issuance of the NTP, Principal is required to furnish a bond (this "Bond");

NOW THEREFORE, We the undersigned Principal and _____ (the "Surety" or "Co-Sureties") are firmly bound and held unto the Obligee, in the penal sum of _____ Dollars (\$ _____) **[NTD: AMOUNT TO BE INSERTED BASED ON 100% OF CONTRACT PRICE]** good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. If the Principal shall comply with all requirements of law and pay, as they become due, all just claims for labor performed and materials and supplies furnished upon or for the work under the Agreement, whether said labor be performed and said materials and supplies be furnished under the original Agreement, any subcontract, or any and all duly authorized modifications thereto, then these presents shall become null and void; otherwise they shall remain in full force and effect.
2. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of claimants otherwise

entitled to recover under this Bond, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

3. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.”

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ on this _____ day of _____, A.D., 20__.

Principal (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: () _____

Surety (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: () _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

EXHIBIT 4-C

FORM OF WARRANTY BOND

Bond No. _____

For

SHERMAN MINTON CORRIDOR PROJECT

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions (“IFA” or Obligee”) has awarded to [**NTD: INSERT DESIGN-BUILD CONTRACTOR’S NAME**] (the “Design-Build Contractor” or “Principal”), a Public-Private Agreement (as amended from time to time, the “Agreement”), which Agreement is specifically incorporated by reference in this Bond, for the design and construction of the Sherman Minton Corridor Project (the “Project”);

AND WHEREAS, initially capitalized terms not otherwise defined in this Bond have the meaning given in the Agreement;

AND WHEREAS, upon achieving Final Acceptance, Design-Build Contractor may obtain a release of the Performance Bond and Payment Bond by satisfying the conditions to release set forth in the Agreement, including providing a bond (this “Bond”);

NOW THEREFORE, We the undersigned Principal and _____ (the “Surety” or “Co-Sureties”) are firmly bound and held unto the Obligee, in the penal sum of _____ Dollars (\$_____) [**NTD: AMOUNT TO BE INSERTED BASED ON 20% OF CONTRACT PRICE**] (the “Bonded Sum”), good and lawful money of the United States of America for the payment whereof, well and truly to be paid to the Obligee, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT, if Principal shall promptly and faithfully perform all of its obligations under the Agreement, as they may be amended or supplemented, including, without limitation, the performance of all Warranty Work, Plant Establishment Work, and payment of claims as described in paragraph 5 below, 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 Agreement is incorporated by reference into this Bond.
2. If the Principal shall promptly and faithfully perform all of its obligations under the Agreement, as they may be amended or supplemented, including without limitation the performance of all Plant Establishment Work, Warranty Work, enforcement of Subcontractor warranties, and payment of claims as described in paragraph 6 below, 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 (or Co-Sureties) for any and all claims hereunder shall in no event exceed the bonded sum.
3. If the above bound Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions, obligations and agreements in the Agreement, including any and all amendments, supplements, and alterations made to the Agreement as therein provided, on the Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify, defend and save harmless the Obligee and all other Indemnified Parties, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and virtue.
4. This Bond shall cover the cost to perform all the obligations of the Principal pursuant to the Agreement, including Warranty Work. The obligations covered by this Bond specifically include all payment obligations, liability for damages and warranties as specified in the Agreement, but not to exceed the bonded sum.
5. Whenever the Principal shall be, and is declared by the Obligee to be, in default under the Agreement, the Surety (or Co-Sureties) shall promptly:
 - (a) remedy such default;
 - (b) complete the work and perform the obligations covered by this Bond in accordance with the terms and conditions of the Agreement then in effect; or
 - (c) select a contractor or contractors to complete the Work and perform the obligations covered by this Bond in accordance with the terms and conditions of the Agreement then in effect, using a contractor or contractors approved by the Obligee in its sole discretion, arrange for a contract that contains substantially the same terms and conditions of the Agreement between such contractor or contractors and the Obligee, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety (or Co-Sureties) is (are) liable hereunder, the bonded sum.

6. This Bond shall inure to the benefit of anyone required to be paid by law under the Agreement so as to give a right of action to such persons or their assigns in any suit brought upon this Bond. The obligations covered by this Bond specifically include:

(a) payments owing to any of the persons involved in prosecution of the Work, including the design and engineering services or construction services, as provided for in the Agreement;

(b) any amounts required to be deducted, withheld, and paid over to the Department of Revenue from the wages of employees of the Principal and its Subcontractors with respect to such work and labor, and

(d) any other payments owing to anyone required to be paid by law.

In case suit is brought to enforce the provisions of this paragraph 6, the Surety (or Co-Sureties) will pay reasonable attorneys' fees, to be fixed by the court.

7. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any rescission of this Bond, solely due to acts of Principal, or any fraud practiced by any other person other than the claimant seeking to recover this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

8. **[NTD: Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that the Obligee and claimants will have no obligation to deal with multiple sureties hereunder. All correspondence from the Obligee or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to the Obligee designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____ on this _____ day of _____, 20__.

Principal (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: () _____

Surety (full legal name): _____

Address: _____

By: _____

Contact Name: _____

Phone: _____

[Note: if more than one surety, then add appropriate phone: (____)]

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

FORM OF MULTIPLE OBLIGEE RIDER

(Warranty Bond)

MULTIPLE OBLIGEE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Warranty Bond No. _____.

WHEREAS, on or about the _____ day of _____, 20, [**NTD: INSERT DESIGN-BUILD CONTRACTOR'S NAME**], (hereinafter called the "Principal"), entered into a Public-Private Agreement bearing the date of _____, 2020 (as amended from time to time, the "Agreement") with the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions (hereinafter called the "Primary Obligee") for the design and construction of the Sherman Minton Corridor Project (the "Project"); and

WHEREAS, initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

WHEREAS, the Primary Obligee requires that the Principal provide a Warranty Bond and that the Indiana Department of Transportation ("INDOT"), Kentucky Transportation Cabinet ("KYTC"), Utility Owners, Local Agencies, and the Railroad be named as additional obligees under the Warranty Bond; and [**NTD: inclusion based on agreements between such entities and IFA and/or INDOT**]

WHEREAS, the Principal and _____ (the "Surety" or "Co-Sureties") have agreed to execute and deliver this Rider concurrently with the execution of Warranty Bond No. _____ (the "Warranty Bond") upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

1. INDOT, KYTC, the Utility Owners, Local Agencies, and the Railroad are hereby added to the Warranty Bond as named obligees (hereinafter referred to as "Additional Obligees").
2. The Surety (or Co-Sureties) shall not be liable under the Warranty Bond to the Primary Obligee, Additional Obligees, or any of them, unless the Primary Obligee, Additional Obligees, or any of them make payments to the Principal (or in the case the Surety (or Co-Sureties) arranges for completion of the Agreement, to the Surety (or Co-Sureties)) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by the Primary Obligee shall have occurred and be continuing under the Agreement.

3. The aggregate liability of the Surety (or Co-Sureties) under the Warranty Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of the Warranty Bond. The Additional Obligees' rights hereunder are subject to the same defenses the Principal and/or the Surety (or Co-Sureties) have against the Primary Obligee. The total liability of the Surety (or Co-Sureties) shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Agreement. The release of the Warranty Bond by the Primary Obligee shall result in the release of the rights of the Additional Obligees under this Rider.
4. The Surety (or Co-Sureties) may, at its option, make any payments under the Warranty Bond by check issued jointly to all of the obligees.
5. It is further understood and agreed that nothing contained in this Rider shall be held to change, alter or vary the terms of the attached Warranty Bond except as set forth hereinabove. In the event of a conflict between the Warranty Bond and this Rider, this Rider shall govern and control. All references to the Warranty Bond, either in the Warranty Bond or in this Rider, shall include and refer to the Warranty Bond as supplemented and amended by this Rider. Except as herein modified, the Warranty Bond shall be and remains in full force and effect.
6. The Rider may be executed in two or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one and same instrument.

Signed, sealed and dated this _____ day of _____, 20_____.

 (Principal)
 (Seal)

By: _____
 (Title)

 (Surety)
 (Seal)

By: _____
 Attorney-in-Fact

EXHIBIT 5

INVOICE AND INVOICE CERTIFICATE

Design-Build Contractor logo, address, phone number, fax number and website

Owner Name

Date: xx/xx/xxxx

Address

Attention:

Project: Project Name

Agreement Number: Pxxx-xx-xxx

Purchase Order Number: xxxxxx

Invoice Number: xx

For professional, technical, and construction services rendered in connection with Project XXXXXX, Project Agreement No. Pxxx-xx-xxx

Invoice Period Covered is _____, 20xx through _____, 20xx

ORIGINAL CONTRACT:	\$
AUTHORIZED CHANGES/CHANGE ORDERS:	\$
TOTAL CONTRACT:	\$
TOTAL INVOICE THROUGH LAST PERIOD	\$
CURRENT INVOICE AMOUNT	\$
TOTAL INVOICED TO DATE	\$
PERCENT INVOICED	%
REMAINING ALLOWANCES (total)	\$ (total)
Temporary Patching Allowance	\$ (subtotal)
Permanent Patching Allowance	\$ (subtotal)
Structural Repair Allowance	\$ (subtotal)

TOTAL AMOUNT PAID TO DATE	\$
ADJUSTMENT TO PREVIOUS PERIOD INVOICE (INCLUDING QUALITY ADJUSTMENTS):	\$
ADJUSTED TOTAL PREVIOUSLY BILLED:	\$
AMOUNTS WITHHELD/OFFSET	\$
REMAINING BUDGET:	\$
NET AMOUNT DUE INVOICE #XXX	\$

Submitted by:

Name (Position)

Date

Approved by:

Name (Position)

Date

Note: The following form of Invoice Certificate will be subject to revision by the Parties following the Effective Date and review of the Schedule of Values, and the revised invoice certificate shall be the form of Invoice Certificate used under the PPA.

WORK DESCRIPTION	BUDGET	PREVIOUSLY INVOICED		CURRENT INVOICE		REMAINING BUDGET	
		Percent Complete	Funds	Percent Complete	Funds	Percent	Funds
MOBILIZATION							
Mobilization	\$	%	\$	%	\$	%	\$
PROFESSIONAL SERVICES							
<i>Design Work</i>	\$	%	\$	%	\$	%	\$
<i>Environmental Permitting and Compliance Services</i>	\$	%	\$	%	\$	%	\$
<i>Other</i>	\$	%	\$	%	\$	%	\$
BONDS AND INSURANCE							
<i>Payment Bond Premium</i>	\$	%	\$	%	\$	%	\$
<i>Performance Bond Premium</i>	\$	%	\$	%	\$	%	\$
<i>Insurance Premiums</i>	\$	%	\$	%	\$	%	\$
<i>Other</i>	\$	%	\$	%	\$	%	\$
GENERAL							
<i>Vegetation/Rule 5 Work</i>	\$	%	\$	%	\$	%	\$
<i>Erosion and Sediment Control</i>	\$	%	\$	%	\$	%	\$
BRIDGES							
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$

WORK DESCRIPTION	BUDGET	PREVIOUSLY INVOICED		CURRENT INVOICE		REMAINING BUDGET	
		Percent Complete	Funds	Percent Complete	Funds	Percent	Funds
BRIDGE PAINTING							
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
BRIDGE PAINTING							
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
OTHER PROJECT INFRASTRUCTURE							
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
<i>WBS Level 4</i>	\$	%	\$	%	\$	%	\$
SUBTOTALS							
	\$		\$		\$		\$

DEDUCTIONS	PREVIOUSLY DEDUCTED	CURRENT DEDUCTIONS
<i>Liquidated Damages under Section 7.3.6 (collectively)</i>		
<i>Liquidated Damages under Section 17.1</i>		
<i>Movement Charges under Section 17.3</i>		
<i>Liquidated Damages under Section 17.4 (collectively)</i>		
<i>Flagging Services Reimbursement</i>		
<i>Etc.</i>		
SUBTOTALS		

TOTAL DUE THIS INVOICE:

\$

Design and Construction Quality Assurance Certificate for Payment and Invoice

In accordance with the PPA Documents, based on on-site observations and the data comprising the above application and invoice, the (a) Design Quality Manager or Construction Quality Manager, and (b) Project Manager certifies to IFA that to the best of Design-Build Contractor's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the PPA Documents, and Design-Build Contractor is entitled to payment of the invoice.

[Design-Build Contractor Design Quality Manager]/[Design-Build Contractor Construction Quality Manager]

Date: _____

[Design-Build Contractor Project Manager]

Date: _____

The undersigned Design-Build Contractor certifies that to the best of Design-Build Contractor's knowledge, information, and belief the work covered by this application for payment and invoice has been completed in accordance with the PPA Documents, that all amounts have been paid by Design-Build Contractor for Work for which previous invoices were issued and payments received from IFA, and that current payment shown herein is now due. All current subcontractors, suppliers and laborers invoices are included in this payment request and invoice.

Design-Build Contractor Authorized Representative

Date: _____

EXHIBIT 6

DESIGNATION OF INITIAL AUTHORIZED REPRESENTATIVES

IFA Representatives:

- [•]
- **Additional representatives designated in writing by IFA for specific matters**

Design-Build Contractor Representative:

- **[DESIGN-BUILD CONTRACTOR REPRESENTATIVE(S) TO BE ADDED PRIOR TO EXECUTION]**

EXHIBIT 7

DESIGN-BUILD CONTRACTOR'S PROPOSAL COMMITMENTS, CLARIFICATIONS AND APPROVED DEVIATIONS VIA THE ATC PROCESS

- | | |
|---------------|--|
| Attachment 1: | Proposal Commitments & Clarifications |
| Attachment 2: | Deviations expressly approved pursuant to the ATC process during procurement |

ATTACHMENT 1 TO EXHIBIT 7

PROPOSAL COMMITMENTS

[NTD: Pursuant to Section 5.10 and Section 5.11 of the ITP, negotiations will include the negotiations of this Attachment 1 to Exhibit 7 of the PPA concerning Proposal Commitments. IFA will prepare the initial draft of this attachment, which is intended to reflect elements of the Proposal that were relevant, in the sole judgment of IFA, to IFA’s evaluation of the Proposal and that exceed the requirements of the PPA Documents, including the Technical Provisions.]

The following pages summarize certain commitments made by Design-Build Contractor in its Proposal submitted for the Project, which Design-Build Contractor agrees either meet or exceed the applicable requirements of the PPA Documents. The commitments set forth herein are included in the Work as “Proposal Commitments”. This summary is an overview of certain Design-Build Contractor commitments and is not intended to be an exhaustive list of commitments made in the Proposal that meet or exceed the requirements of the PPA Documents. Nothing contained herein shall limit, modify, discharge, eliminate or reduce the requirements of the PPA Documents listed in Section 1.3 or Design-Build Contractor’s obligations under Section 1.3.2. Inclusion of a commitment in this Exhibit 7 shall not form the basis of any Claim against IFA or shift to IFA the risk of, or liability for, any site condition, event, approval or consent that has otherwise been allocated to Design-Build Contractor under the PPA Documents.

Commitment No.	Proposal Location	Proposal Commitment
1.		
2.		
3.		
4.		
5.		

N		

ATTACHMENT 2 TO EXHIBIT 7

APPROVED DEVIATIONS VIA THE ATC PROCESS

The following table lists Design-Build Contractor’s approved Deviations that were expressly approved pursuant to the Alternative Technical Concepts (ATCs) process during the procurement. The approved Deviations are described in further detail in the respective ATC submittals, which Design-Build Contractor may incorporate into the Project. The Deviations specifically identified in the approved ATC submittals listed below, other than Design Exceptions, are approved by IFA subject to satisfaction of any conditions set forth in the letters from IFA to Design-Build Contractor. Such Deviations, subject to satisfaction of any listed conditions, expressly supersede any conflicting provisions in the Technical Provisions to the extent of the conflict, as provided in Section 1.3.2 of the PPA. These approved Deviations, to the extent utilized by Design-Build Contractor, shall otherwise meet all requirements of the conditions set forth in the IFA approval letters included with the approved Deviations listed below, Technical Provisions and other PPA Documents.

ATC	No. []	[NTD – INSERT TITLE OF CORRESPONDING ATC]
ATC	No. []	[NTD – INSERT TITLE OF CORRESPONDING ATC]

[see attached]

[NTD: APPROVED ATCS AND IFA APPROVAL LETTERS TO BE INSERTED AS PART OF THIS ATTACHMENT 2 TO EXHIBIT 7 IN EXECUTION VERSION]

EXHIBIT 8
ALLOWANCES

A. Temporary Patching Allowance	\$730,000
B. Permanent Patching Allowance	\$920,000
C. Structural Repairs Allowance	\$640,000

EXHIBIT 9

FORM OF DESIGN-BUILD CONTRACTOR CHANGE REQUEST

SHERMAN MINTON CORRIDOR PROJECT

CHANGE REQUEST NO. _____ **CONTRACT NO.** _____

SECTION I

Name: _____ Date: _____

Title: _____

Contract No: _____ Agreement No: _____

Company Name: _____

Description:

Additions/Deletions/Modifications to Contract requirements:

Contract Requirement

Addition/Deletion/Modification

Scope:

Reason for Design-Build Contractor Change Request:

Is this Change Request for an IFA-Directed Change?

Yes No

Please Explain:

Does this Change Request involve less than \$10,000 in additional direct costs?

Yes No

**Design-Build Contractor Project Manager
Date:**

SECTION II: Cost Estimate

The total cost estimate of this Change Order is \$ _____. Documentation supporting this Change Request is attached as Exhibits _____ through _____.

Payment Schedule Items Added/Deducted:

<u>Activity No.</u>	<u>Description</u>	<u>Amount</u>
_____	_____	_____

This Change 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 II-A

Lump sum price is \$ _____

Section II-B

UNIT PRICE ITEM	UNIT PRICE ¹	QUANTITY	PRICE (Unit Price x Quantity)

¹ For patching and structural repair unit prices, refer to Section 12.1.3 of the PPA.

Total of all items in above Table: \$ _____

Section II-C (Reference _____)

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

A.	Design-Build Contractor Labor (construction)	
1.	Wages	\$ _____
2.	Labor benefits	\$ _____
3.	Subsistence and travel for craft labor	\$ _____
4.	Employer payment to supervisors	\$ _____
B.	Design-Build Contractor and Subcontractor Labor (professional services)	
1.	Wages (Raw)	\$ _____
2.	Labor benefits	\$ _____
3.	Off-duty peace officers and patrol cruisers	\$ _____
C.	Materials (with taxes, freight and discounts)	\$ _____
D.	Equipment ¹	\$ _____
E.	Subcontracts (Time and Materials cost)	\$ _____
F.	Utility Direct Costs, if applicable	\$ _____
G.	Overhead and Profit	
1.	Labor (20% of A)	\$ _____
2.	Materials (12% of C)	\$ _____
3.	Equipment (12% of D)	\$ _____
4.	Subcontracts (7% of E)	\$ _____
5.	Utility Direct Costs (7% of F)	\$ _____
H.	Bonds and Insurance	\$ _____
I.	Grand Total	\$ _____

¹ Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 109.05(b)4 of the Standard Specifications
Subcontractor quotes are attached as Exhibits _____ through _____ in accordance with Section 13.4.2.2 of the PPA. ***[To be provided to the extent work is to be performed by Subcontractors.]***

SECTION III: Delay Analysis

The status of Substantial Completion is as follows:

Unaffected by this Change Request

- 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 Request
 - 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, Final Acceptance, and Float are as follows:

1. Substantial Completion: _____
2. Final Acceptance: _____
3. Number of days of Project Float _____

A Delay Analysis Report is attached as Exhibit _____ in accordance with Section 13.4.2.3 of the PPA. ***[To be provided to the extent that Design-Build Contractor is claiming an event, situation or change affects the Critical Path.]***

SECTION IV: Justification

Justification for this Change Request with reference to the PPA:

SECTION V: Certification

Each Change Request shall contain the following certification:

I, _____, the Authorized Representative of Design-Build Contractor, hereby certify under penalty of perjury that the above four sections represent a true, accurate and complete summary of all aspects of this Change Request, and that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) Design-Build Contractor has independently investigated the Change

Request and determined it to be justified as to entitlement and amount, (c) the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which have been or may be incurred as a result of the event, occurrence or matter giving rise to the proposed change (and includes all Subcontractor and Supplier amounts), and (d) the cost and pricing data forming the basis for this Change Request is complete, accurate and current.

If the foregoing Change Request includes claims of Subcontractors or Suppliers, the undersigned certifies that I have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount, and that any Subcontractor pricing data required to be provided has been provided in accordance with Section 21.2 of the PPA.

Design-Build Contractor Authorized Representative

Date: _____

Any pricing data provided by a Subcontractor in connection with a Change Request shall include the certification required to be provided by Subcontractor under Section 21.2 of the PPA.

SECTION VI (Reviewed by IFA)

INDOT Construction Manager

Date _____

INDOT Project Manager

Date _____

IFA Authorized Representative

Date _____

Comments:

FORM OF CHANGE ORDER

CHANGE ORDER NO. _____ CONTRACT NO. _____

SECTION I

Originator: _____ Date: _____

• Title: _____

Contract No: _____

• Company Name: _____

DESCRIPTION:

SCOPE:

REASON FOR DESIGN-BUILD CONTRACTOR CHANGE REQUEST:

Design-Build 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:

<u>Activity No.</u>	<u>Description</u>	<u>Amount</u>
_____	_____	_____

This Change 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 II-A

Lump sum price is \$ _____

Section II-B

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

*For patching unit prices, refer to Section 12.1.3 of the PPA.

Total of all items in above Table: \$ _____

Section II-C

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

- | | | |
|----|--|----------|
| A. | Design-Build Contractor Labor (construction) | |
| | 1. Wages ¹ | \$ _____ |
| | 2. Labor benefits | \$ _____ |
| | 3. Subsistence and travel for craft labor | \$ _____ |
| | 4. Employer payment to supervisors | \$ _____ |

B.	Design-Build Contractor and Subcontractor Labor (professional services)	
	1. Wages (Raw)	\$ _____
	2. Labor benefits	\$ _____
	3. Off-duty peace officers and patrol cruisers	\$ _____
C.	Materials (with taxes, freight and discounts)	\$ _____
D.	Equipment ¹	\$ _____
E.	Subcontracts (Time and Materials cost)	\$ _____
F.	Utility Direct Costs	\$ _____
G.	Overhead and Profit	
	1. Labor (20% of A.1)	\$ _____
	2. Materials (12% of C)	\$ _____
	3. Equipment (12% of D)	\$ _____
	4. Subcontracts (7% of E)	\$ _____
	5. Utility Direct Costs (7% of F)	\$ _____
H.	Bonds and Insurance	\$ _____
I.	Grand Total	\$ _____

¹ Equipment Costs (estimated or actual) based on Blue Book Equipment Rental Rates calculated in accordance with Section 109.05(b)4 of the Standard Specifications.

Subcontractor quotes are attached as Exhibits _____ through _____ in accordance with Section 13.4.2.2 of the PPA. ***[To be provided to the extent work is to be performed by Subcontractors.]***

SECTION III: Delay Analysis

The status of Substantial Completion is as follows:

- Unaffected by this Change Request
 - 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 Request
 - 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, Final Acceptance and Float are as follows:

1. Substantial Completion: _____
2. Final Acceptance: _____
3. Number of days of Project Float _____

A Delay Analysis Report is attached as Exhibit _____ in accordance with Section 13.4.2.3 of the PPA. ***[To be provided to the extent that Design-Build Contractor is claiming an event, situation or change affects the Critical Path.]***

SECTION IV

Justification for Change Order with reference to the PPA:

SECTION V: Certification

I, _____, the Authorized Representative of Design-Build Contractor, hereby certify under penalty of perjury that the above four sections represent a true, accurate and complete summary of all aspects of this Change Order, and that (a) the amount of time and/or compensation requested is justified as to entitlement and amount, (b) the amount of time and/or compensation requested includes all known and anticipated impacts or amounts, direct, indirect and consequential, which have been or may be incurred as a result of the event, occurrence or matter giving rise to the proposed change (and includes all Subcontractor and Supplier amounts), and (c) the cost and pricing data forming the basis for this Change Order is complete, accurate and current.

If the foregoing Change Order includes claims of Subcontractors or Suppliers, the undersigned certifies that I have reviewed such claims and have determined in good faith that the claims are justified as to both entitlement and amount, and that any Subcontractor pricing data required to be provided has been provided in accordance with Section 21.2 of the PPA.

Design-Build Contractor Authorized Representative

Date: _____

SECTION VI (Reviewed by IFA)

INDOT Construction Manager
Date_____

INDOT Project Manager
Date_____

IFA Authorized Representative
Date_____

Comments:

EXHIBIT 10

LIQUIDATED DAMAGES AND MOVEMENT CHARGES

Table 10-1-1	
Allowable Mainline Interstate Movement Closures	
Segment	Maximum Movement Closures
I-64 EB (from approximate MM 121.4 to approximate 123.8 (Kentucky State Line) and from MM 0.0 (Kentucky State Line) to approximate MM 1.4)	<p>One (1) nine (9) consecutive day closure per calendar year period; and</p> <p>Up to three (3) weekend periods per calendar year (Work may commence no earlier than Friday at 10 p.m. and conclude no later than Monday at 5 a.m.)</p>
I-64 WB (from approximate MM 121.4 to approximate 123.8 (Kentucky State Line) and from MM 0.0 (Kentucky State Line) to approximate MM 1.4)	<p>One (1) nine (9) consecutive day closure per calendar year period; and</p> <p>Up to three (3) weekend periods per calendar year (Work may commence no earlier than Friday at 10 p.m. and conclude no later than Monday at 6 a.m.)</p>

Table 10-1-2		
Movement Charges for Prohibited Closures -- Exceeding Maximum Movement Closure Durations for Allowable Mainline Interstate Movement Closures		
Category	Unit	Amount
Single Lane Prohibited Closures:		
All Hours I-64 EB (from approximate MM 121.4 to approximate 123.8 (Kentucky State Line) and from MM 0.0 (Kentucky State Line) to approximate MM 1.4) I-64 WB (from approximate MM 121.4 to approximate 123.8 (Kentucky State Line) and from MM 0.0 (Kentucky State Line) to approximate MM 1.4)	15 minutes	\$1,500 per 15 minutes
Full Roadway Prohibited Closures:		
All Hours I-64 EB (from approximate MM 121.4 to approximate 123.8 (Kentucky State Line) and from MM 0.0 (Kentucky State Line) to approximate MM 1.4) I-64 WB (from approximate MM 121.4 to approximate 123.8 (Kentucky State Line) and from MM 0.0 (Kentucky State Line) to approximate MM 1.4)	15 minutes	\$2,500 per 15 minutes

Notes to Table 10-1-2:

1. Each measure of time will be rounded up to the next 15 minutes. As an example, if a particular lane closure occurs for 15 minutes and one second, with the unit increment of 15 minutes, the lane closure will be counted as two 15-minute closures and twice the amount will be payable.
2. Single lane prohibited closures will be measured on the basis of direction and lane. The "Single Lane Prohibited Closure" charge will be assessed for any closure of any portion of a lane in any direction. A closure of more than one lane will result in a Movement Charge for each affected lane, unless all lanes are closed, which constitutes a "Full Roadway Prohibited Closure."
3. The closure will commence as of the event, and no Notice is required nor cure period allowed.

4. No Movement Charge under Table 10-1-2 will be assessed for any emergency or urgent situation, as described in Section 12.3.11.1 of the Technical Provisions, unless such emergency or urgent situation was caused, in whole or in part, by the acts or omissions of a DB-Related Entity or a Design-Build Contractor Fault.
5. No Movement Charge under Table 10-1-2 will be assessed for any (i) off-peak Movement Closure for I-64 (mainline interstate), or (ii) temporary traffic stoppage under Section 801.16(c) of the Standard Specifications for I-64 (mainline interstate), each as described in Section 12.3.11.1 of the Technical Provisions; unless such off-peak Movement Closure was caused, in whole or in part, by the acts or omissions of any DB-Related Entity or any Design-Build Contractor Fault.
6. Other than as described in clauses (4) and (5) above, as permitted during the periods reflected in Table 10-1-1 or resulting solely due to an IFA-Caused Delay or Force Majeure Event, any Movement Closure for I-64 (mainline interstate) will be considered a Prohibited Closure and subject to assessment of the Movement Charges set forth in Table 10-1-2 or Table 10-5, as applicable.
7. This Table 10-1-2 shall apply to a Prohibited Closure that exceeds the allowable number of days or time period for a Movement Closure for I-64 (mainline interstate) beyond the Movement Closures which are allowed pursuant to Table 10-1-1. This Table 10-1-2 does not apply to (i) any off-peak Movement Closure for I-64 (mainline interstate) that commences before or extends beyond the time indicated in Table 12-1 of the Technical Provisions; and (ii) any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications for I-64 (mainline interstate) that exceeds 20 minutes, each as inconsistent with the requirements in Section 12.3.11.1 of the Technical Provisions. Table 10-5 shall apply to (x) any off-peak Movement Closure for I-64 (mainline interstate) that commences before or extends beyond the time indicated in Table 12-1 of the Technical Provisions; and (y) any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications for I-64 (mainline interstate) that exceeds 20 minutes, each as inconsistent with the requirements in Section 12.3.11.1 of the Technical Provisions.

**Table 10-2-1
Allowable Ramp Movement Closures**

Movement	Maximum Movement Closures	Movement Closure Limitations
I-64 EB Exit Ramp to I-265 EB (from painted gore nose of exit from I-64 EB to painted gore nose of entrance to I-265 EB)	One (1) weekend closure	Work may commence no earlier than Friday at 9 p.m. and conclude no later than Monday at 6 a.m.
I-64 EB Entrance Ramp from West Spring Street	One (1) nine (9) consecutive day closure per calendar year	Must be concurrent with I-64 EB mainline closure
I-64 EB Exit Ramp to I-264 EB	One (1) nine (9) consecutive day closure per calendar year	Must be concurrent with I-64 EB mainline closure
I-264 WB Exit Ramp to I-64 WB	One (1) nine (9) consecutive day closure per calendar year	Must be concurrent with I-64 WB mainline closure
I-64 WB Exit Ramp to West Elm Street	One (1) nine (9) consecutive day closure per calendar year	Must be concurrent with I-64 WB mainline closure
I-265 WB Exit Ramp to I-64 WB (from painted gore nose of exit from I-265 WB to painted gore nose of entrance to I-64 WB)	One (1) weekend closure	Work may commence no earlier than Friday at 9 p.m. and conclude no later than Monday at 6 a.m.
I-265 EB Exit to I-65 SB (from painted gore nose of exit from I-265 EB to painted gore nose of entrance to I-65 SB)	Two (2) weekend closures	Work may commence no earlier than Friday at 9 p.m. and conclude no later than Monday at 6 a.m.

Table 10-2-2		
Movement Charges for Prohibited Closures -- Exceeding Maximum Movement Closure Durations for Allowable Ramp Movement Closures		
Category	Unit	Amount
Single Lane Prohibited Closures:		
All Hours (all identified ramp closures in <u>Table 10-2-1</u>)	15 minutes	\$200 per 15 minutes
Full Roadway Prohibited Closures:		
All Hours (all identified ramp closures in <u>Table 10-2-1</u>)	15 minutes	\$500 per 15 minutes

Notes to Table 10-2-2:

- Each measure of time will be rounded up to the next 15-minute increment. As an example, if a particular lane closure occurs for 15 minutes and one second, with the unit increment of 15 minutes, the lane closure will be counted as two 15-minute closures and twice the amount will be payable.
- Single lane prohibited closures will be measured on the basis of direction and lane. The "Single Lane Prohibited Closure" Movement Charge will be assessed for any closure of any portion of a lane in any direction. A closure of more than one lane will result in a Movement Charge for each affected lane, unless all lanes are closed, in which case constitutes a "Full Roadway Prohibited Closure."
- The closure will commence as of the event, and no Notice is required nor cure period allowed.
- No Movement Charge under Table 10-2-2 will be assessed for any emergency or urgent situation, as described in Section 12.3.11 of the Technical Provisions, unless such emergency or urgent situation was caused, in whole or in part, by the acts or omissions of a DB-Related Entity or a Design-Build Contractor Fault.
- No Movement Charge under Table 10-2-2 will be assessed for any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications, as described in Section 12.3.11.1 of the Technical Provisions.
- Other than as described in clauses (4) and (5) above, as allowed during the periods reflected in Table 10-2-1 or resulting solely due to an IFA-Caused Delay or Force Majeure Event, any Movement Closure for any ramp in Table 10-2-1 will be considered a Prohibited Closure and subject to assessment of the Movement Charges set forth in Table 10-2-2 or Table 10-5, as applicable.
- This Table 10-2-2 shall apply to a Prohibited Closure that exceeds the allowable number of days or time period for a Movement Closure for a ramp beyond the

Movement Closures which are allowed pursuant to Table 10-2-1. This Table 10-2-1 does not apply to any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications for any ramp in Table 10-2-1 that exceeds 20 minutes, each as inconsistent with the requirements in Section 12.3.11.1 of the Technical Provisions. Table 10-5 shall apply to any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications for any ramp in Table 10-3-1 that exceeds 20 minutes, each as inconsistent with the requirements in Section 12.3.11.1 of the Technical Provisions.

**Table 10-3-1
Allowable Local Street Movement Closures**

Movement	Maximum Movement Closures	Movement Closure Limitations
West Spring Street (from 100 feet west of West 5 th Street/I-64 EB off-ramp to State Street)	Up to twenty (20) evening closures during a single consecutive twenty (20) day period	Work may commence each night no earlier than 9 p.m. and conclude no earlier than 6 a.m. the next day
West Elm Street (I-64 WB off-ramp to State Street)	Up to twenty (20) evening closures during a single consecutive twenty (20) day period	Work may commence each night no earlier than 9 p.m. and conclude no earlier than 6 a.m. the next day
West 5th Street (from West Market Street to West Spring Street)	Up to twenty (20) evening closures during a single consecutive twenty (20) day period	Work may commence each night no earlier than 9 p.m. and conclude no earlier than 6 a.m. the next day
All other local intersection roadways intersecting West Spring, West Elm and West 5th Streets, as necessary for the New Albany Pavement work	Up to twenty (20) evening closures during a single consecutive twenty (20) day period	Work may commence each night no earlier than 9 p.m. and conclude no earlier than 6 a.m. the next day

Table 10-3-2		
Movement Charges for Prohibited Closures -- Exceeding Maximum Movement Closure Durations for Allowable Local Street Movement Closures		
Category	Unit	Amount
Single Lane Prohibited Closures:		
All Hours (all identified local street closures in <u>Table 10-3-1</u>)	15 minutes	\$100 per 15 minutes
Full Roadway Prohibited Closures:		
All Hours (all identified local street closures in <u>Table 10-3-1</u>)	15 minutes	\$250 per 15 minutes

Notes to Table 10-3-2:

- Each measure of time will be rounded up to the next 15 minutes. As an example, if a particular lane closure occurs for 15 minutes and one second, with the unit increment of 15 minutes, the lane closure will be counted as two 15-minute closures and twice the amount will be payable.
- Single lane prohibited closures will be measured on the basis of direction and lane. The "Single Lane Prohibited Closure" Movement Charge will be assessed for any closure of any portion of a lane in any direction. A closure of more than one lane will result in a Movement Charge for each affected lane, unless all lanes are closed, in which case constitutes a "Full Roadway Prohibited Closure."
- The closure will commence as of the event, and no Notice is required nor cure period allowed.
- No Movement Charge under Table 10-3-2 will be assessed for any emergency or urgent situation, as described in Section 12.3.11 of the Technical Provisions, unless such emergency or urgent situation was caused, in whole or in part, by the acts or omissions of a DB-Related Entity or a Design-Build Contractor Fault.
- No Movement Charge under Table 10-3-2 will be assessed for any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications, as described in Section 12.3.11.1 of the Technical Provisions.
- Other than as described in clauses (4) and (5) above, as allowed during the periods reflected in Table 10-3-1, as allowed temporarily pursuant to Table 10-3-1, or resulting solely due to an IFA-Caused Delay or Force Majeure Event, any closure will be considered a Prohibited Closure and subject to assessment of the Movement Charges set forth in Table 10-3-2 or Table 10-5, as applicable.
- This Table 10-3-2 shall apply to a Prohibited Closure that exceeds the allowable number of days or time period for a Movement Closure for a local street beyond the

Movement Closures which are allowed pursuant to Table 10-3-1. This Table 10-3-1 does not apply to any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications for any local street in Table 10-3-1 that exceeds 20 minutes, each as inconsistent with the requirements in Section 12.3.11.1 of the Technical Provisions. Table 10-5 shall apply to any temporary traffic stoppage under Section 801.16(c) of the Standard Specifications for any local street in Table 10-3-1 that exceeds 20 minutes, each as inconsistent with the requirements in Section 12.3.11.1 of the Technical Provisions.

Table 10-4
Liquidated Damages for Critical Work Activities

Category	Unit	Amount
Faulty Temporary Pavement	For each period of non-conformance with the requirements of <u>Section 9.4.3</u> of the Technical Provisions lasting 12 hours after the earlier of (a) notification by IFA and (b) Design-Build Contractor's Actual Knowledge thereof, and up to 18 hours without full cure	\$5,000 per any instance or instances that occur(s) within any one mile length of roadway, measured separately per direction of traffic, and measured in one mile segments from the beginning of the work zone.
	For each period of non-conformance with the requirements of <u>Section 9.4.3</u> of the Technical Provisions lasting more than 18 hours after the earlier of (a) notification by IFA and (b) Design-Build Contractor's Actual Knowledge thereof, and up to 24 hours without full cure	\$10,000 per any instance or instances that occur(s) within any one mile length of roadway, measured separately per direction of traffic, and measured in one mile segments from the beginning of the work zone.
	For each additional 24 hour period, or portion thereof, after the initial 24 hours, without full cure	\$15,000 per any instance or instances that occur(s) within any one mile length of roadway, measured separately per direction of traffic, and measured in one mile segments from the beginning of the work zone.
Maintaining Lights, Electrical and Related Items Other Than Traffic Signals	For each period of non-conformance with <u>Section 4.3</u> of the Technical Provisions lasting 72 hours, or portion thereof, after the earlier of (a) notification by IFA and (b) Design-Build Contractor's Actual Knowledge thereof, without full cure	\$100 per each instance or instances of non-functioning luminaire(s)

	For each 24 hour period, or portion thereof, after the initial 72 hours without full cure	\$100 per each instance or instances of non-functioning luminaire(s)
Maintaining Traffic Signals	For failure to fully cure within 4 hours after the earlier of (a) notification by IFA and (b) Design-Build Contractor's Actual Knowledge thereof	\$500 per signal head
	Each one hour period, or portion thereof, after the initial 4 hours without full cure	\$500 per signal head
Proceeding with Construction Before Hold Point is Released	For each 24 hours of construction without a Hold Point release and each additional 24 hour period, or portion thereof, after the initial 24 hours	\$1,000 per incident
Maintaining ITS	For each period of non-conformance with <u>Section 17.1</u> of the Technical Provisions for each camera outage and functionality lasting 4 hours, or portion thereof, after the earlier of (a) notification by IFA or KYTC/Trimarc and (b) Design-Build Contractor's Actual Knowledge thereof, without full cure	\$1,000 per camera
	For each period of non-conformance with <u>Section 17.1</u> of the Technical Provisions for broken or cut fiber and functionality lasting 1 hour, or portion thereof, after the earlier of (a) notification by IFA or KYTC/Trimarc and (b) Design-Build Contractor's Actual Knowledge thereof, without full	\$500 per broken or cut fiber optic cable

	cure	
	For each period of non-conformance with <u>Section 17.1</u> of the Technical Provisions for all other ITS equipment and functionality lasting 48 hours, or portion thereof, after the earlier of (a) notification by IFA or KYTC/Trimarc and (b) Design-Build Contractor's Actual Knowledge thereof, without full cure	\$1,000 per location
	For each 1 hour period, or portion thereof, after the initial 4 hours without full cure for each camera outage and functionality	\$100 per camera
	For each 1 hour period, or portion thereof, after the initial 1 hour without full cure for broken or cut fiber and functionality	\$500 per broken or cut fiber optic cable
	For each 24 hour period, or portion thereof, after the initial 48 hours without full cure for all other ITS equipment and functionality	\$1,000 per location

Notes to Table 10-4:

1. Each measure of time will be rounded up to the next unit (e.g., single hour, four hours, or 24 hours, etc.). For instance, if (i) a noncompliance of maintaining lights occurs and lasts for 25 hours after the expiration of the initial 72 hour notification period, it will be considered to be two instances and twice the amount will be payable; and (ii) construction associated with a Hold Point commences without a Hold Point approval and lasts for five (5) minutes, it will be considered one such incident.
2. For example, with Faulty Temporary Pavement, for a single instance, the first assessment will occur one second after the expiration of the 12 hour cure period without full cure; the second assessment will occur one second after the expiration of 18 hours without full cure; the third assessment will occur one second after the expiration of 24 hours without full cure; subsequent assessments will occur for each 24 hour period, or any increment thereof, after the expiration of the first 24 hours without full cure.
3. With respect to Maintaining Traffic Signals, liquidated damages will be assessed for the initial failure to cure within four hours and for each one hour period thereafter (e.g., the first assessment will occur one second after the expiration of the four hour

cure period without full cure; the second assessment will occur one second after the expiration of the five hour period without full cure; subsequent assessments will occur for each one hour period, or any increment thereof, after the expiration of the sixth hour without full cure) until the repairs are made.

4. With respect to Maintaining ITS camera outages and functionality, liquidated damages will be assessed for the initial failure to cure within four hours and for each one hour period thereafter (e.g., the first assessment will occur one second after the expiration of the four hour cure period without full cure; the second assessment will occur one second after the expiration of the five hour period without full cure; subsequent assessments will occur for each one hour period, or any increment thereof) until the repairs are made.

5. With respect to Maintaining ITS broken or cut fiber and functionality, liquidated damages will be assessed for the initial failure to cure within one hour and for each one hour period thereafter (e.g., the first assessment will occur one second after the expiration of the one hour cure period without full cure; the second assessment will occur one second after the expiration of the two hour period without full cure; subsequent assessments will occur for each one hour period, or any increment thereof) until the repairs are made.

6. With respect to Maintaining ITS for all other ITS equipment and functionality, liquidated damages will be assessed for the initial failure to cure within 48 hours and for each 24 hour period thereafter (e.g., the first assessment will occur one second after the expiration of the 48 hour cure period without full cure; the second assessment will occur one second after the expiration of the next 24 hour period without full cure; subsequent assessments will occur for each 24 hour period, or any increment thereof) until the repairs are made.

Table 10-5	
Movement Charges for Prohibited Closures – Early Start or Late Finish Off-Peak Closures and Temporary Traffic Stoppages	
Category	Amount
Single Lane Prohibited Closures:	
All Hours	\$5,000 + (\$250 per 15 minutes)
Full Roadway Prohibited Closures:	
All Hours	\$10,000 + (\$500 per 15 minutes)

Notes to Table 10-5:

1. Each measure of time will be rounded up to the next 15-minute increment. As an example, if a particular lane closure occurs for 15 minutes and one second, with the unit increment of 15 minutes, the lane closure will be counted as two 15-minute closures and twice the amount will be payable. The minimum Movement Charge will be \$5,250.
2. Single lane prohibited closures will be measured on the basis of direction and lane. The “Single Lane Prohibited Closure” Movement Charge will be assessed for any closure of any portion of a lane in any direction. A closure of more than one lane will result in a Movement Charge for each affected lane, unless all lanes are closed, in which case constitutes a “Full Roadway Prohibited Closure.”
3. The closure will commence as of the event, and no Notice is required nor cure period allowed.
4. This Table 10-5 shall apply to (i) any off-peak Movement Closure for the mainline interstate, ramps and local streets that commences before or extends beyond the time indicated in Table 12-1 and Table 12-2 of the Technical Provisions or Section 12.3.11 of the Technical Provisions; and (ii) any temporary traffic stoppage under Section 801.16(c) in the Standard Specifications for the mainline interstate, ramps and local streets that exceeds 20 minutes, each as inconsistent with the requirements in Section 12.3.11 of the Technical Provisions.

EXHIBIT 11
FEDERAL REQUIREMENTS

	<u>Exhibit Description</u>	<u>No. of Pages</u>
Attachment 1	Federal Requirements for Federal-Aid Construction Projects	3
Attachment 2	FHWA Form 1273	12
Attachment 3	Federal Prevailing Wage Rates	
Attachment 3A	Federal Prevailing Wage Rate – Indiana	[]
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Attachment 4	Equal Employment Opportunity	9
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ATTACHMENT 1 TO EXHIBIT 11
FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

GENERAL. — The Work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 11. Whenever in said required contract provisions, or elsewhere in this Exhibit 11 (as applicable), references are made to:

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

(b) "contractor", "prime contractor", "bidder," "proposer," "Federal-aid construction contractor," "prospective first tier participant," or "First Tier Participant," such references shall be construed to mean Design-Build 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 PPA between Design-Build Contractor and IFA 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," "department or agency entering into this transaction," or "contracting agency," such references shall be construed to mean IFA or INDOT, or both as the context requires, except where a different department or agency 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, Design-Build 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.

PROHIBITION OF FRAUD OR FALSE STATEMENTS. — The notice provided in 18 U.S.C., Sec. 1020, shall be posted in one or more places where it is readily available to and viewable by all personnel concerned with the Project.

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 PPA and INDOT's Disadvantaged Business Enterprise Program adopted pursuant to 49 CFR Part 26.

CONVICT PRODUCED MATERIALS

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

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

ACCESS TO RECORDS

a. As required by 2 CFR 200.336 and 49 CFR 18.36(i)(10), Design-Build Contractor and its Subcontractors shall allow FHWA, Inspectors General, and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of Design-Build 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), Design-Build Contractor and its Subcontractors shall retain all 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. Design-Build 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.

RECOVERED MATERIALS. – Design-Build Contractor shall comply with all requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), including the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

CARGO PREFERENCE ACT. – Design-Build Contractor shall comply with the requirements of the Cargo Preference Act of 1954 (46 U.S.C. §55305) and its implementing regulations (46 CFR Part 381) whenever transporting by oceanic shipment any equipment, material, or commodities acquired solely for the Project, and not to replenish existing inventories independent of the PPA. Without limiting the foregoing, Design-Build Contractor agrees:

a. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this PPA, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels; and

b. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) of this section to both the Contracting Officer (through the Design-Build Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

c. The Design-Build Contractor shall insert the substance of this Section of Attachment 1 to Exhibit 11 in all Subcontracts.

ATTACHMENT 2 TO EXHIBIT 11
FHWA FORM 1273

[See attached] *[NTD: expecting potential update September 2019]*

**REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS**

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants /

Employees with Disabilities: The contractor must be familiar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

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

1. Minimum wages

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

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

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (W1-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATTACHMENT 3 TO EXHIBIT 11
FEDERAL PREVAILING WAGE RATE

The federal prevailing wage rates for the Work through Final Acceptance shall be those set forth under the general wage decision for highway construction projects in Floyd County, Indiana and Jefferson County, Kentucky as published on the Davis-Bacon wage determination website on the date that is ten days before the Proposal Due Date. Wage decisions IN20200006 and KY20200038 are located at [<http://www.wdol.gov/dba.aspx#0>]

[NTD: Wage decision IN20200006 and KY20200038 to be added in Final RFP as Attachments 3A and 3B and updated 10 days before Proposal Date.]

ATTACHMENT 4 TO EXHIBIT 11
EQUAL EMPLOYMENT OPPORTUNITY

SPECIAL PROVISION

000---005

**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 America 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 7 a 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 construction work 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 work 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 from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting 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 therefore, 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 work force.
- 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. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

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).

Equal Opportunity Clause

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment

without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each laborer union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant

Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, or guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfaction assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

ATTACHMENT 5 TO EXHIBIT 11

SPECIAL PROVISION

000—0004

**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 in Attachment 4 to this Exhibit 11, the contractor'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
(percent)**

**Goals for
female participation
in each trade
(percent)**

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 Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), 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 or 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.

3. Subcontracting.

The contractor shall provide written notification to the Project Sponsors within 14 days after 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 IFA 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 Indiana and the Commonwealth of Kentucky. The geographical area covered by these goals for other minorities are the boroughs or other geographic areas in the State of Indiana and the Commonwealth of Kentucky 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

Borough or Other Geographic Area	Goals for Minority Participation	County
Project Area	11.2%	Floyd County, Indiana and Jefferson County, Kentucky

ATTACHMENT 6 TO EXHIBIT 11
CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

Design-Build Contractor/Subcontractor certifies, to the best of its knowledge and belief that Design-Build Contractor/Subcontractor has complied with Section 1352, Title 31, U.S. Code, and specifically, that:

1. The Design-Build 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 Design-Build Contractor/Subcontractor, 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 agreements, 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 agreement, 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 such federal agreement, 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. The Design-Build Contractor/Subcontractor also agrees by signing this certification that it shall require that the language of this certification be included in all contractor agreements including lower tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly. Any person who fails to sign or file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure

ATTACHMENT 7 TO EXHIBIT 11
COMPLIANCE WITH BUY AMERICA REQUIREMENTS

Design-Build Contractor shall comply with the Federal Highway Administration (FHWA) Buy America Requirement in 23 CFR 635.410, which permits FHWA participation in the Contract 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 for these materials must occur in the United States, with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to Buy America requirements. 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 Contract.

A certificate of compliance, substantially in the form required under Section 916.03(a) of the Standard Specifications, and in such other forms as IFA may require, in its sole discretion, shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except as for the above exception.

ATTACHMENT 8 TO EXHIBIT 11

INDIANA DEPARTMENT OF
TRANSPORTATION



ON-THE-JOB TRAINING PROGRAM &
PARTNERSHIP AGREEMENT

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1.1 Definitions

Contractor means “prime” contractor.

Disadvantaged Person means an individual or family that meets the Department of Health and Human Services poverty guidelines. These guidelines are updated at least annually and will be utilized as the eligibility criterion for the On-the-Job Training (OJT) Program.

Division Administrator means the chief Federal Highway Administration (FHWA) official assigned to conduct FHWA business in a particular State.

DOT means the U.S. Department of Transportation, including FHWA.

Federal-Aid Contract is any contract between the Indiana Department of Transportation (INDOT) and a contractor that is paid for in whole or in part with DOT assistance.

Journeyman means a person who is capable of performing all the duties within a given job classification or craft.

Minorities mean the following categories for reporting data on race and ethnicity: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander.

Supportive Services means those services provided in connection with approved on-the-job training programs for highway construction workers and highway contractors which are designed to increase the overall effectiveness of training programs through the performance of various functions necessary to the program, but which are not generally considered part of the actual on-the-job training.

Trainee means a person who received on-the-job training through an approved on-the-job training program.

Training Program means any training or apprentice program that meets the standards set forth in 23 CFR 230 and has been approved by either the FHWA Division Administrator or U.S. Department of Labor.

1.2 Policy Statement

It is the policy of INDOT to require full utilization of all available training and skill-improvement opportunities to assure the increased participation of minorities, women, and disadvantaged persons in all phases of the highway construction industry.

1.3 Nondiscrimination in Programs and Activities

Title VI of the Civil Rights Act of 1964 - Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin in programs or activities which receive federal financial assistance.

Title VII of the Civil Rights Act of 1964 - Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment and was passed to bring equality in hiring,

transfers, promotions, compensation, access to training, and other employment-related decisions.

Form FHWA 1273 - Section II (Nondiscrimination) of Form FHWA-1273 sets forth a contractor's minimum Equal Employment Opportunity requirements. These include acceptance of a general operating policy that prohibits discrimination based on race, color, religion, sex, national origin, age, or disability.

23 CFR 230 - The provisions of 23 CFR 230 are applicable to all state highway agencies that receive federal financial assistance in connection with highway construction projects.

1.4 Program Objective

The primary objective of the OJT Program is to offer equal opportunity for the training and upgrading of minorities, women, and disadvantaged persons toward journeymen status in the highway construction trades. The OJT Program has been developed in accordance with 23 CFR 230, Appendix B to Subpart A (Training Special Provisions) and is administered by INDOT's Economic Opportunity Division.

1.5 Program Summary

INDOT's OJT Program fulfills its objective by implementing a program that is dynamic and addresses constraints through the following elements:

- The program is contractor-based and affords each contractor flexibility in selecting which projects trainees can be utilized.
- Encourages contractors to select individual trainees who can become members of the contractor's regular workforce upon completion of their program.
- Emphasizes training in skilled-craft classifications using approved apprenticeship programs and other training programs approved by FHWA.
- Monitors the quality of training each individual receives.
- Assists contractors with addressing their EEO goals through training of minorities, women, and disadvantaged individuals.
- Partners with the industry and community-based organizations capable of providing OJT supportive services to trainees.
- Encourages systematic and direct recruitment of trainees through a variety of referral sources.

1.6 Goal Methodology

IFA will establish an annual training goal each year in which the contractor is working on a federal-aid contract in the State of Indiana. This annual training commitment will be calculated by multiplying the current three-year average number of hours worked in the

highway construction trades on federal-aid contracts in the State of Indiana (as a prime or subcontractor) by five percent (5%). If a contractor does not have a current 3-year history, IFA will establish the annual training goal at the time the contractor is awarded its first contract for that year.

1.7 Trainee Eligibility

No individual will be employed as a trainee in any classification in which he/she has successfully completed a training program or in which he/she has been employed as a journeyman.

1.8 Trainee Selection Procedures

The contractor shall make every effort to enroll minorities, women, and disadvantaged persons into their training programs by conducting systematic and direct recruitment through public and private sources (e.g., partnerships with trade groups, minority and women organizations, community-based organizations, and employment agencies) to the extent that such persons are available within a reasonable area of recruitment. The contractor will be responsible for demonstrating the steps taken in pursuance thereof, prior to a determination as to whether the contractor is in compliance with the Training Special Provisions. 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.

1.9 Trainee Wage Rates

Trainees will be paid at the appropriate percentage of the journeyman's rate specified in the federal-aid contract for the job classification involved.

1.10 Training Goal Credit

IFA strongly encourages contractors to utilize trainees on all of their projects. Training credit will be allowed for each eligible trainee employed on any project within the State of Indiana (i.e., federal-aid, municipality, private, etc.). Training may be provided by a subcontractor, provided the contractor retains the primary responsibility for meeting the training requirements.

1.11 Contractor Responsibilities

Contractor responsibilities in implementing the Training Special Provisions include the following:

- The number of trainees shall be distributed among the work classifications on the basis of the contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment.
- The ratio of trainees to journeymen shall not be greater than permitted by the terms of the approved training program.

- The contractor will periodically review the training and promotional opportunities for minorities, women, and disadvantaged employees and will encourage eligible employees to apply for such opportunities.
- The contractor will advise employees and applicants for employment of available training programs and entrance requirements.
- The contractor shall furnish each trainee with a copy of the training program he/she is enrolled.
- If a trainee is terminated, the contractor is required to make good faith efforts to replace the trainee.
- Contractors are required to have an approved training program prior to working on a federal-aid contract.

1.12 Good Faith Efforts

If a contractor does not or cannot achieve its annual training goal, it must provide adequate Good Faith Efforts documentation. Good Faith Efforts are those efforts designed to achieve equal opportunity through positive, aggressive, and continuous result-oriented measures. Good Faith Efforts should be taken as new trainee opportunities become available.

IFA will consider all contractors' documentation of Good Faith Efforts on a case-by-case basis. Consideration will be given to the following:

- Availability of minorities, females, and disadvantaged persons for training opportunities.
- The potential for effective training.
- Dollar value and length of contract.
- Total workforce that the average bidder could be expected to use.
- Geographic location.
- Type of work.
- The need for journey-level individuals in the area.

Good Faith Efforts may include, but are not limited to:

- Contact minority and female employees to gain referrals on other minority and female applicants.
- Contact minority and female recruitment sources when hiring opportunities arise.

- Upgrade minority and female unskilled workers into the skilled classifications when possible.
- Review and follow up on previously received applications from minorities and females when hiring opportunities arise.
- Maintain documentation of efforts made to achieve diversity in the workforce.

1.13 Program Monitoring and Sanctions for Noncompliance

IFA will continuously monitor contractor compliance with the goal and objectives outlined in the OJT Program. If a contractor can demonstrate that it achieved its annual training goal or that it made adequate Good Faith Efforts to do so, then IFA will make the determination that the contractor is in compliance with the OJT program.

Where a contractor has neither achieved its training goal nor submitted adequate Good Faith Efforts documentation, IFA will issue a Show Cause Notice for noncompliance and require the contractor to explain the deficiency and/or submit a written Corrective Action Plan outlining the actions it will undertake to prevent future recurrence. If a contractor fails or refuses to submit a Corrective Action Plan within 30 calendar days of receiving the Show Cause Notice, IFA may impose administrative sanctions. Administrative sanctions for noncompliance may include: liquidated damages, withholding of progress payments, termination or cancellation of contracts, and removal of prequalification status or inability to bid on future contracting opportunities.

1.14 Contractor Reporting Requirements

OJT Trainee Introduction Form – must be submitted to the Project Sponsors at time of hire for approval into OJT Program.

OJT Trainee Termination/Completion Form – must be submitted to the Project Sponsors whenever a trainee is terminated or successfully completes their training program.

Monthly OJT Trainee Report – reflects the number of training hours acquired by the trainee for a given month. The report must be submitted to the Project Sponsors **by the 10th day of each month** following the month being reported. For example, March reports are due by April 10th.

Monthly Project Report – provides a monthly listing of all projects (i.e., federal-aid, state, and private) the contractor is employed. The report must be submitted to the Project Sponsors **by the 10th day of each month** following the month being reported. For example, March reports are due by April 10th.

Quarterly OJT Trainee Evaluation Form – provides a quarterly assessment of the trainee. The report must be submitted to the Project Sponsors **by the 10th day of each month** following the quarter being reported. For example, first quarter (January-March) reports are due by April 10th.

Annual OJT Training Report – provides an annual summary of the contractors OJT performance. The report must be submitted to the Project Sponsors **by January 10th**.

REPORTS ARE DUE AS INDICATED ABOVE REGARDLESS OF ACTIVITY.

1.15 Records

The contractor shall retain all training and reporting records relating to its annual training commitment for a period of three years. Such records shall be available at reasonable times and places for inspection by authorized representatives of the Project Sponsors and FHWA.

1.16 Annual Training Goal Calculation and Partnership Agreement

Step 1: Determine the total number of hours worked in the highway construction trades on **INDOT federal-aid contracts** (either as a prime contractor or subcontractor) during the past three years. Do not include hours worked on state-funded and private work.

HOURS WORKED DURING	2017 HOURS	2018 HOURS	2019 HOURS
TOTAL			

Step 2: Add the total number of hours from each year and divide by three (3):

$$\begin{array}{ccccccc}
 \boxed{} & + & \boxed{} & + & \boxed{} & = & \boxed{} \div 3 = \boxed{} \\
 \text{2017} & & \text{2018} & & \text{2019} & & \text{Average Hours}
 \end{array}$$

Step 3: Multiply the "Average Hours" by five percent (5%):

$$\begin{array}{ccc}
 \boxed{} & \times & \boxed{.05} = \boxed{} \\
 \text{Average Hours} & & \text{Annual Training Goal}
 \end{array}$$

I hereby agree to all of the terms and conditions contained herein and affirm under penalty and perjury that the information stated above is true and accurate.

FOR CONTRACTOR USE		FOR IFA USE	
Company Name		Authorized Signature	Date
Authorized Signature	Date	Printed Name and Title	
Printed Name and Title			
Telephone Number	Email Address		

Please detach this annual training goal calculation and return to INDOT c/o Katie Daniels at kdaniels2@indot.in.gov

FOR MORE INFORMATION CONTACT

Indiana Department of Transportation
Economic Opportunity Division
100 North Senate Avenue
N-750
Indianapolis, IN 46204

Katie Daniels
Contract Compliance Specialist / On-the-Job Training Program Lead
317-233-2412
kdaniels2@indot.in.gov

EXHIBIT 12

DESIGN-BUILD CONTRACTOR'S DBE CERTIFICATION

[insert completed Form G from Proposal]

EXHIBIT 13

FORM OF DRUG-FREE WORKPLACE CERTIFICATION

As required by Executive Order No. 90-5, dated April 12, 1990, issued by the Governor of the State of Indiana, Design-Build Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Design-Build Contractor will give written notice to the Project Sponsors within ten (10) days after receiving actual notice that Design-Build Contractor or an employee of Design-Build Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the PPA and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in the PPA is in excess of \$25,000.00, Design-Build Contractor certifies and agrees that it will provide a drug-free workplace by:

- A.** Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Design-Build Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B.** Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Design-Build Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C.** Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify Design-Build Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- D.** Notifying the Project Sponsors and the Indiana Department of Administration in writing within 10 days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E.** Within 30 days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including

termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

The undersigned affirms, under penalty of perjury that he or she is authorized to execute this Certification on behalf of Design-Build Contractor.

Dated _____

Design-Build Contractor

By: _____

Name:

Title:

EXHIBIT 14

FORM OF GUARANTY

[NTD: to be conformed in execution version based on whether a guarantor is used]

[EXECUTED COPIES OF GUARANTEES TO REPLACE THIS FORM PRIOR TO EXECUTION OF THE PPA]

GUARANTY

This Guaranty (the "Guaranty") is made by [____], a [____] organized under the laws of [____] ("Guarantor"), in favor of the Indiana Finance Authority, a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions ("IFA").

WHEREAS, [____], as Design-Build Contractor ("Design-Build Contractor"), and IFA are parties to that certain public-private agreement (the "PPA") pursuant to which the Design-Build Contractor has agreed to develop, design, and construct the Project. Unless the context otherwise requires, capitalized terms used but not separately defined in this Guaranty will have the meaning given to them in the PPA.

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

Design-Build Contractor is a [____]. The Guarantor is a [____][entity]. The execution of the PPA by IFA and the consummation of the transactions contemplated by the PPA will materially benefit Guarantor. Without this Guaranty, IFA would not have entered into the PPA with Design-Build Contractor. In consideration of IFA's execution of the PPA and consummation of the transactions contemplated by the PPA, 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.

a. Guarantor guarantees to IFA and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the Design-Build Contractor arising out of, in connection with, under or related to the PPA (including, without limitation, the Design-Build Contractor's obligation to make payment to IFA for Liquidated Damages, stipulated damages, Lane Charges, and indemnity). The obligations guaranteed pursuant to this Guaranty are collectively referred to in this Guaranty as the "Guaranteed Obligations."

b. Guarantor covenants to IFA that if at any time the Design-Build Contractor should default in the performance when due of, observance when due of, or should commit a breach of, any of the Guaranteed Obligations, Guarantor shall promptly, upon written notice by IFA,

perform or pay the Guaranteed Obligations or cause the performance or payment of the Guaranteed Obligations.

c. Guarantor agrees that, to the extent Guarantor's obligations under this Guaranty relate to obligations of the Design-Build Contractor which require performance other than the payment of money, IFA may proceed against Guarantor to effect specific performance of such obligations (to the extent that such relief is available). Guarantor agrees to assume or to procure the assumption of the PPA, and to perform or to procure the performance of all of the terms and conditions under the PPA should the PPA be disaffirmed or rejected by a trustee or court in a bankruptcy proceeding involving the Design-Build Contractor, or, at the option of IFA, Guarantor shall, in the event of the Design-Build Contractor's bankruptcy, make and enter into or have made and entered into, by one or more entities reasonably satisfactory to IFA, new contract documents for the balance of the term of the PPA, which new contract documents shall be in form and substance identical to the replaced PPA.

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 Design-Build Contractor. If any payment made by the Design-Build 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 under this Guaranty will not be released, discharged or otherwise affected by:

a. except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by Design-Build Contractor to exercise, in whole or in part, any right or remedy held by Design-Build Contractor with respect to the PPA or any transaction under the PPA;

b. any change in the PPA or the obligations under the PPA, any change in the existence, structure or ownership of Guarantor or the Design-Build Contractor, or any dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or similar proceeding affecting the Design-Build Contractor, Guarantor or their respective assets or any defense that may arise in connection with or as a result of such dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or other proceeding;

c. the existence of any Claim or set-off which the Design-Build Contractor has or Guarantor may have against IFA, 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;

d. any release of Design-Build Contractor from any liability with respect to the PPA;

e. any failure of consideration or lack of authority of the Design-Build Contractor, any lack of validity or enforceability, illegality or defect or deficiency, or any other defense to formation of the PPA (or any term, condition or covenant thereof);

f. any change in the time, manner, terms, place of payment of, or any other term of all or any of the Guaranteed Obligations, or any other amendment, waiver of, or any consent to departure from any PPA executed in connection therewith;

g. the incapacity or lack of power or authority of, or dissolution or change in, the members or shareholders of the Design-Build Contractor;

h. any release or subordination of any collateral then held by IFA as security for the performance by Design-Build Contractor of the Guaranteed Obligations; or

i. any other circumstance that might otherwise constitute a defense available to, or a discharge of, Guarantor with respect to the Guaranteed Obligations, other than performance or payment in full of the Guaranteed Obligations.

This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the PPA, 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, which applies to all of the subsections in this Section 2.

3. Independent Obligations. Guarantor agrees that the Guaranteed Obligations are independent of the obligations of the Design-Build Contractor and if any default occurs under this Guaranty, a separate action or actions may be brought and prosecuted against Guarantor whether or not the Design-Build Contractor is joined therein. IFA may maintain successive actions for other defaults of Guarantor. IFA's rights under this Guaranty 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 indefeasibly paid and fully performed.

a. Guarantor agrees that IFA 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 Design-Build Contractor. Guarantor waives the right to require IFA to proceed against the Design-Build Contractor, to exercise any right or remedy under any of the PPA 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 Design-Build Contractor and IFA or their respective successors and assigns, with respect to any of the PPA or the Guaranteed Obligations; (ii) any waiver of or failure to enforce the Guaranteed Obligations or any of the terms, covenants or conditions contained in any of the PPA or any modification thereof; (iii) subject to Section 21, any release of the Design-Build Contractor from any liability with respect to any of the PPA; or (iv) any release or subordination of any collateral then held by IFA as security for the performance by the Design-Build 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 PPA or the pursuit by IFA of any remedies which IFA either now has or may hereafter have with respect thereto under any of the PPA.

d. Design-Build Contractor and Guarantor acknowledge and agree that Guarantor's obligations and undertakings under this Guaranty are derivative of, and not in excess of, the Guaranteed Obligations and Guarantor shall be entitled to all rights and defenses of Design-Build Contractor except as previously waived or disclaimed in this Guaranty. Notwithstanding any other term or provision of this Guaranty, in the event that the Design-Build Contractor's obligations have been changed by any modification, agreement or stipulation between Design-Build Contractor and IFA or their respective successors or assigns, the term "Guaranteed Obligations" as used in this Guaranty shall mean the Guaranteed Obligations as so changed, except that the Guaranteed Obligations shall be determined without regard to the effect of any such modification, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which Design-Build Contractor is the debtor, unless otherwise specified in the modification, agreement or stipulation.

4. Liability of Guarantor.

a. IFA may enforce this Guaranty upon the occurrence of a breach by the Design-Build Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between IFA and the Design-Build 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. IFA, 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 under this Guaranty, from time to time may (i) with respect to the financial obligations of the Design-Build Contractor, if and as permitted by the PPA, 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 IFA 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 IFA may have against any such security, as IFA in its discretion may determine, and (vi) exercise any other rights available to it under the PPA.

d. This Guaranty and the obligations of Guarantor under this Guaranty will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than infeasible 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 an 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 PPA, 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 PPA or any agreement or instrument executed pursuant thereto; (iii) IFA's knowledge of or consent to the change, reorganization or termination of the corporate structure or existence of the Design-Build Contractor; (iv) any defenses, set-offs or counterclaims that the Design-Build Contractor may allege or assert against IFA 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 IFA to proceed against the Design-Build Contractor or any other Person or to proceed against or exhaust any security held by IFA at any time or to pursue any right or remedy under any of the PPA or any other remedy in IFA'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 Design-Build Contractor or any other Person or the failure of IFA 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 IFA even though the election of remedies, such as non-judicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against the Design-Build Contractor;

e. all notices to Guarantor 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 Design-Build Contractor under any of the PPA, 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;

f. any defense based upon any act or omission of IFA which directly or indirectly results in or aids the discharge or release of the Design-Build Contractor, Guarantor or any security given or held by IFA in connection with the Guaranteed Obligations;

g. any duty on the part of IFA to disclose to Guarantor any facts IFA may now or hereafter know about the Design-Build Contractor, regardless of whether IFA has reason to

believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor. Guarantor acknowledges that it is fully responsible for being and keeping informed of the financial condition of the Design-Build Contractor and of all circumstances bearing on the risk of non-payment of any Guaranteed Obligations;

h. [the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect ownership or economic interests in the Design-Build Contractor]; and

i. 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 Design-Build Contractor that arises from the performance of Guarantor under this Guaranty, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of IFA against the Design-Build Contractor, or any other security or collateral that IFA 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 the Design-Build Contractor or any shareholders, partners, members, joint venturers of the Design-Build Contractor to Guarantor is subordinated to all of the Guaranteed Obligations until such time as all Guaranteed Obligations shall have been indefeasibly paid in full. Whenever and for so long as the Design-Build Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by the Design-Build Contractor or any shareholders, partners, members, joint venturers of the Design-Build Contractor to Guarantor without the prior written consent of IFA. Any payment by the Design-Build Contractor or any shareholders, partners, members, joint venturers of the Design-Build Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for IFA.

7. Cumulative Rights. All rights, powers and remedies of IFA under this Guaranty will be in addition to and not in lieu of all other rights, powers and remedies given to IFA, whether at law, in equity or otherwise.

8. Representations and Warranties. In addition to the representations and warranties with respect to solvency set forth in Section 18, Guarantor represents and warrants that:

a. it is a corporation duly organized, validly existing, and in good standing under the laws of the State of _____ ***[NTD: to be inserted based on Guarantor entity]*** and qualified to do business and is in good standing under the laws of the State of Indiana;

b. it has all requisite organizational power, right, 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 PPA or referred to therein, the financial status of the Design-Build Contractor and the ability of the Design-Build Contractor to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the PPA and is fully informed of the remedies IFA may pursue, with or without notice to the Design-Build 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 Design-Build Contractor and will keep itself fully informed as to all aspects of the financial condition of the Design-Build Contractor, the performance of the Guaranteed Obligations and 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 IFA to disclose any matter, fact or thing relating to the business, operations or conditions of the Design-Build Contractor now known or hereafter known by IFA;

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 of this Guaranty;

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 Entity which challenges the validity or enforceability of this Guaranty;

k. it is not subject to any outstanding judgment, rule, writ, injunction or decree of any Governmental Entity that adversely affects its ability to perform its obligations under this Guaranty; and

l. it derives a substantial direct or indirect economic benefit from the PPA.

9. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of Indiana, without regard to conflict of law principles. The venue of any

court, judicial or referee proceeding under this PPA shall be in Riverside County, Indiana, unless changed by the judicial officer.

10. Entire Agreement. This Guaranty contains the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter.

11. Amendments. No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and IFA. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by IFA. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

12. Severability. If any clause, provision, section or part of this Guaranty is ruled invalid (including invalid due to Change in Law) by a court having proper jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Guaranty, which shall be construed and enforced as if this Guaranty did not contain such invalid or unenforceable clause, provision, section or part.

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 (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 IFA:

Indiana Finance Authority
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Silvia Perez, Project Manager
Telephone: 317-234-7701
Email: sperez@ifa.in.gov

With copies to:

Indiana Finance Authority
c/o Indiana Department of Transportation
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204
Attention: Dan Huge, Director of Public Finance
Telephone: 317-234-2916
Email: dhuge@ifa.in.gov

Indiana Finance Authority
c/o Indiana Department of Transportation
One North Capitol Avenue, Suite 900
Indianapolis, Indiana 46204

Attention: Andy Seiwert, General Counsel
Telephone: 317-234-4780
Email: aseiwert@ifa.in.gov

Indiana Department of Transportation
100 North Senate, Suite N750
Indianapolis, Indiana 46204
Attention: Travis Underhill, Deputy Commissioner of Districts
Telephone: 317-234-5136
Email: tunderhill@indot.in.gov

Indiana Department of Transportation
100 North Senate, Suite N758
Indianapolis, Indiana 46204
Attention: Heather Kennedy, Chief Counsel and Deputy Commissioner
Telephone: 317-233-3699
Email: hkennedy@indot.in.gov

If to Guarantor: _____

Attention: _____
Telephone: _____
Email: _____

Either Guarantor or IFA 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 days following deposit in the United States mail, postage prepaid if delivered by mail.

14. Captions. The captions in this Guaranty are for convenience only and shall not be deemed part of this Guaranty or considered in construing this Guaranty.

15. Assignability. This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and IFA, but is not assignable by Guarantor without the prior written consent of IFA, which consent may be granted or withheld in IFA'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 IFA in exercising, any right, power or remedy under this Guaranty 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; Solvency.

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 Design-Build Contractor or by any defense which the Design-Build Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. IFA is not obligated to file any claim relating to the Guaranteed Obligations if the Design-Build Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of IFA 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 IFA that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve the Design-Build 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 IFA, or allow the claim of IFA in respect of, any such interest accruing after the date on which such proceeding is commenced.

19. Attorneys' Fees. Guarantor agrees to pay to IFA without demand reasonable attorneys' fees and all costs and other expenses (whether by lawsuit or otherwise, and including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by IFA 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 individual and/or entity, 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 Design-Build 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 Design-Build Contractor under the PPA except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the Design-Build Contractor and any other defense to formation of the PPA, and (c) defenses available to the Design-Build 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.

22. Additional Guarantor Waivers and Acknowledgements.

a. Guarantor hereby waives any and all defenses it might have that liquidated damages or stipulated damages constitute a penalty or that they do not bear a reasonable relation to the actual damages.

b. GUARANTOR ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON EXECUTION OF THIS GUARANTY. NO FORMAL ACCEPTANCE BY IFA IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS EFFECTIVE AS OF THE DATE HEREOF.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this [] day of [] 202[].

[]

By: _____

Name: _____

Title: _____

EXHIBIT 15

NTP + 180 SCHEDULE

***[NTD: TO BE INSERTED FROM DESIGN-BUILD CONTRACTOR'S PROPOSAL
SUBJECT TO NEGOTIATIONS]***