

CONTRACT

THIS CONTRACT made this 30th day of January, 2009, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and the CITY AND COUNTY OF BROOMFIELD, One Descombes Drive, Broomfield, Colorado, 80020, CDOT Vendor #: 2000091, hereinafter referred to as the “Contractor” or the “Local Agency.”

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function 3200, GL Acct. 4231200011, WBS Element 16501.20.10,
(Contract Encumbrance Amount: \$0.00)
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to Title I, Subtitle A, Section 1108 of the “Transportation Equity Act for the 21st Century” of 1998 (TEA-21) and/or the “Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users” of 2005 (SAFETEA-LU) and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and will in the future be allocated for transportation projects requested by Local Agencies and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”), hereinafter referred to as the “Program.”
4. Pursuant to § 43-1-223, C.R.S. and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State.
5. The State and Local Agency have requested that a certain local transportation project be funded as part of the Program, and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency further understands that, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The State desires to perform the “work” as described in in form #463, as it may be revised.

6. Federal-aid funds have been made available for project STA C800-001 (16501), which shall consist of the final design and construction of the 120th Avenue Connection, referred to as the “Project” or the “Work.” Such Work will be performed in Broomfield, Colorado, specifically described in Exhibit A.

7. The matching ratio for this federal aid project is 80% to 82.79% federal-aid funds to 17.21% to 20% Local Agency funds, it being understood that such ratio applies only to such costs as are eligible for federal participation, it being further understood that all non-participating costs shall be borne by the Local Agency at 100%.

8. The Local Agency desires to comply with the Federal Provisions and other applicable requirements, including the State’s general administration and supervision of the Project through this contract, in order to obtain federal funds.

9. The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter, which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit B.

10. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and Exhibit B.

11. This contract will serve as the Local Agency’s permission for CDOT to enter into a Design-Build contract for both design and construction of the Project using the Design-Build delivery process through a “Best Value” approach rather than a low-bid approach to contracting, and to select CDOT’s agent, “The Design-Build Contractor”. The Design-Build contract (Books 1-4) will define CDOT’s and the Design-Build Contractor’s requirements for design and construction coordination, submittals, materials verification testing, compliance auditing, and acceptance and approval procedures for the Project.

12. The Local Agency has participated with CDOT in the development of the project goals. The following goals have been established in priority for the Project:

- Maximize improvements within the program budget.
- Provide a quality product.
- Minimize inconvenience to the traveling public and affected residents and businesses.
- Provide a visually-pleasing finished product.
- Meet or beat the contract schedule.

13. The Local Agency agrees to allow the Design-Build Contractor and utilities performing project-related work to occupy and perform work in Local Agency-owned property, right of way and easements within the limits of the Project without obtaining permits, as long as the Contractor and each utility company complies with the requirements of this contract and the Design-Build Contract. All associated permit fees are hereby waived for CDOT and the Design-Build contractor by the Local Agency.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of the final design and construction of portions of the 120th Avenue Connection and other roadways and improvements, in the City and County of Broomfield, Colorado. The proposed Design-Build 120th Avenue Connection Project will include improvements within the Phase 1 project area and as much of the Phase 3 project areas as possible within the available project funding.

The primary responsibility of the State is to perform general administration and supervision of performance of the project, including entering into a Design-Build contract for both design and construction of the Project, and the administration of federal funds, State funds, and Local Agency funds. The State shall perform, as required, project inspection and testing; approving sources of materials; required plant and shop inspections; documentation of contract payments; preparing and approving pay estimates; preparing, approving, and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervisions; overseeing Quality Control activities and meeting requirements of the FHWA/CDOT Stewardship Agreement.

The Design-Build contract between CDOT and the Design-Build Contractor will define the project elements as follows:

Phase 1 (Minimum Basic Configuration) major elements will include:

1. 120th Avenue Connection (with concrete pavement) from Wadsworth Parkway east to the intersection with the relocated Wadsworth Boulevard
2. Wadsworth Boulevard relocation (with composite asphalt/base pavement section) from the new intersection with 120th Avenue south to tie to existing Wadsworth Boulevard.
3. Wadsworth Place connection (with composite asphalt/base pavement section) from relocated Wadsworth Boulevard north to tie to existing Wadsworth.
4. Destination Drive connection (with composite asphalt/base pavement section) from the new intersection with 120th Avenue Connection south to tie to existing.
5. Cul-de-sacs at north and south terminations of Allison Street.
6. Bridge structures on 120th Avenue Connection over U.S. 36 and Commerce Street.
7. Relocation of City and County of Broomfield Water and Sanitary Sewer facilities from existing Allison Street to proposed Commerce Street alignment.
8. Storm water detention ponds within the City Park Basin (west of U.S. 36) and the Airport Creek Basin along with storm sewer facilities within roadways completed as a part of the Minimum Basic Configuration.
9. Signal reconstruction at Wadsworth Parkway and 120th Avenue Connection and signing and striping on roadways completed as a part of the Minimum Basic Configuration.
10. Full street lighting on roadways completed as a part of the Minimum Basic Configuration.

Within the maximum project funding amount, the Design-Build Contractor may propose to construct all or portions of the Phase 3 project area as Additional Requested Elements (A.R.E.s).

Phase 3 (Additional Requested Elements) major elements may include:

1. A.R.E 1
 - a. 118th Avenue (with composite asphalt/base pavement section) between proposed Commerce Street and proposed Wadsworth Boulevard.
 - b. Storm sewer, signing and striping, and full street lighting on 118th Avenue.
2. A.R.E 2
 - a. Commerce St. (with composite asphalt/base pavement section) between existing 120th Avenue, (including intersections with 120th Ave.) and proposed 118th Avenue.
 - b. Hydrant adjustments, storm sewer facilities, signing and striping, and full street lighting on Commerce Street south of 120th Avenue.
3. A.R.E 3
 - a. Commerce Street (with composite asphalt/base pavement section) from north tie to existing Commerce Street to existing 120th Avenue, (including intersection with Park Street and property accesses).
 - b. Hydrant adjustments, storm sewer facilities, signing and striping, and full street lighting on Commerce Street north of 120th Avenue.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 28 of this contract
2. This contract
3. Exhibit A (Form 463)
4. Exhibit C (Funding Provisions)
5. Exhibit D (Certification for Federal-Aid Contracts)
6. Exhibit E (DBE Requirements)
7. Exhibit F (Option Letter)
8. Other Exhibits in descending order of their attachment.

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. The term of this contract shall continue through the completion and final acceptance of the Project by the State, FHWA and the Local Agency.

Section 4. Project Funding Provisions

The maximum amount payable to the Local Agency under this contract shall be \$0.00

The Local Agency has estimated the total cost of the Work and is prepared to provide its match share of the cost, as evidenced by an appropriate ordinance/resolution or other authority letter, which expressly authorizes the Local Agency the authority to enter into this contract and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as Exhibit B.

The funding provisions for the Project are attached hereto as Exhibit C. The Local Agency shall provide its share of the funds for the Project as outlined in Exhibit C.

Section 5. Project Payment Provisions

A. The Local Agency will reimburse the State for incurred costs relative to the project following the Local Agency's review and approval of such charges, subject to the terms and conditions of this contract.

B. If the Local Agency is to be billed for CDOT-incurred costs, the billing procedure shall be as follows:

1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.

C. The State will prepare and submit to the Local Agency, no more than monthly, charges for costs incurred relative to the project. The State's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format.

Section 6. ROW Acquisition and Relocation

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing that all right of way has been acquired in accordance with the applicable State and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with all federal and state statutes, regulations, CDOT policies and procedures, 49 CFR Part 24, the government wide Uniform Act regulation, the FHWA Project Development Guide and CDOT's Right of Way Operations Manual.

Allocation of Responsibilities can be as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Operation Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

Section 7. Utilities

The State will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing that all such clearances have been obtained.

Section 8. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, either the State or the Local Agency, as appropriate, shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The State or the Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

1. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
2. Obtaining the railroad's detailed estimate of the cost of the Work.
3. Establishing future maintenance responsibilities for the proposed installation.
4. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
5. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 9. Environmental Obligations

The State shall ensure that all Work is performed in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

Section 10. Maintenance Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The Local Agency will make proper provisions for such maintenance obligations each year.

Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State and FHWA will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 11. Federal Requirements

The State and/or the selected design/build team shall at all times during the execution of this contract strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. The design/build team shall also require compliance with these statutes and regulations in sub grant agreements permitted under this contract. Listings of certain federal and state laws that may be applicable are described in Exhibit I.

Section 12. Record Keeping

The State shall maintain a complete file of all records, documents, communications, and other written materials which pertain to the costs incurred under this contract. The State shall maintain such records for a period of three years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agency and FHWA to inspect the project and to inspect, review and audit the project records.

Section 13. Termination Provisions

This contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty days before the effective date of such termination.

B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten days opportunity to cure the default or show cause why termination is

otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined. If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.

C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the State is to be paid, reimbursed, or otherwise compensated with federal and/or Local Agency funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the State expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 14. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 15. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 6, 2000 South Holly Street, Denver, Colorado 80222. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 6 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State:

If to the Local Agency:

Irena Motas
CDOT Region 6
4670 Holly Street
Denver, Colorado 80216
(303) 398-6732

Debra Baskett
City and County of Broomfield
One Descombes Drive
Broomfield, Colorado 80020
(303) 438-6385

Section 16. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 17. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 18. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 19. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 20. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 21. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or affect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 22. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 23. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 24. Option Letters

Option Letters may be used to extend Agreement term, change the level of service within the current term due to unexpected overmatch, add a phase without increasing contract dollars, or increase or decrease the amount of funding. **These options are limited to the specific scenarios listed below.** The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Following are the applications for the individual options under the Option Letter form:

Option 1 - Option to extend or renew (this option applies to Highway and Signal maintenance contracts only). In the event the State desires to continue the Services and a replacement contract has not been fully approved by the termination date of this contract, the State, upon written notice to Contractor, may unilaterally extend this contract for a period of up to one year. The contract shall be extended under the same terms and conditions as the original contract, including, but not limited to prices, rates and service delivery requirements.

This extension shall terminate at the end of the one year period or when the replacement contract is signed by the Colorado State Controller or an authorized delegate. The State may exercise this option by providing a fully executed option to the contractor, within thirty days prior to the end of the current contract term, in a form substantially equivalent to **Exhibit F**.

If the State exercises this option, the extended contract will be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed five years.

Option 2 – Level of service change within current term due to unexpected overmatch in an overbid situation only. In the event the State has contracted all project funding and the Local Agency’s construction bid is higher than expected, this option allows for additional Local Overmatch dollars to be provided by the Local Agency to be added to the contract. This option is only applicable for Local Overmatch on an overbid situation and shall not be intended for any other Local Overmatch funding.

The State may unilaterally increase the total dollars of this contract as stipulated by the executed Option Letter (**Exhibit F**), which will bring the maximum amount payable under this contract to the amount indicated in Exhibit C-1 attached to the executed Option Letter (future changes to Exhibit C shall be labeled as C-2, C-3, etc, as applicable). Performance of the services shall continue under the same terms as established in the contract. The State will use the Financial Statement submitted by the Local Agency for “Concurrence to Advertise” as evidence of the Local Agency’s intent to award and it will also provide the additional amount required to exercise this option. If the State exercises this option, the contract will be considered to include this option provision.

Option 3 – Option to add overlapping phase without increasing contract dollars. The State may require the contractor to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original contract with the contract dollars remaining the same. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit F**. If the State exercises this option, the contract will be considered to include this option provision.

Option 4 - To update funding (increases and/or decreases) with a new Exhibit C. This option can be used to increase and/or decrease the overall contract dollars (state, federal, local match, local agency overmatch) to date, by replacing the original funding exhibit (Exhibit C) in the Original Contract with an updated Exhibit C-1 (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc).

The State may have a need to update changes to state, federal, local match and local agency overmatch funds as outlined in Exhibit C- 1, which will be attached to the option form. The State may exercise this option by providing a fully executed option to the contractor within thirty (30) days after the State has received notice of funding changes, in a form substantially equivalent to **Exhibit F**.

If the State exercises this option, the contract will be considered to include this option provision.

Section 25. Disadvantaged Business Enterprise (DBE)

The Local Agency will comply with all requirements of attached exhibits regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 CFR Part 26 under this contract, it must submit a copy of its program's requirements to the State for review and approval before the execution of this contract. If the Local Agency uses its program for this contract, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for its use as described above.

Section 26. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement, will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 27. Single Audit Act Amendment

All state and local government and non-profit organization Sub-Grantees receiving more than \$500,000 from all funding sources, that are defined as federal financial assistance for Single Audit Act Amendment purposes, shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 CFR 18.20 through 18.26. The Single Audit Act Amendment requirements that apply to Sub-Grantees receiving federal funds are as follows:

- a) If the Sub-Grantee expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.
- b) If the Sub-Grantee expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the “financial” procedures and processes for this program area.
- c) If the Sub-Grantee expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.
- d) Single Audit can only be conducted by an independent CPA, not by an auditor on staff.
- e) An audit is an allowable direct or indirect cost.

The Special Provisions apply to all contracts except where noted in *italics*.

1. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).** This contract shall not be deemed valid until it has been approved by the Colorado State Controller or designee.
2. **FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.
[Applicable Only to Intergovernmental Contracts] No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.
4. **INDEPENDENT CONTRACTOR. 4 CCR 801-2.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the state pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless contractor or a third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the state) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.
5. **NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable State and federal laws respecting discrimination and unfair employment practices.
6. **CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.
7. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to Intergovernmental Agreements]** The State Controller may withhold payment of certain debts owed to State agencies under the State's vendor offset intercept system for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et. seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts certified by the State Controller as owing to the State as a result of final agency determination or judicial action.
8. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** No State or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this paragraph, the State may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
9. **EMPLOYEE FINANCIAL INTEREST. CRS §24-18-201 and §24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract.
10. **PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, institution of higher education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
11. **PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised May 13, 2008

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

**STATE OF COLORADO:
BILL RITTER, JR., GOVERNOR**

City and County of Broomfield
Legal Name of Contracting Entity

By *Pamela Hutton*
for Executive Director
Department of Transportation

2000091
CDOT Vendor Number

[Signature]
Signature of Authorized Officer

LEGAL REVIEW:

**JOHN W. SUTHERS
ATTORNEY GENERAL**

PAT QUINN, Mayor
Print Name & Title of Authorized Officer

By *Kathryn E. Young*

**LOCAL AGENCY:
(A corporate attestation is required.)**

Attest (Seal) By *Lidia Kegemes Deputy*
(Corporate Secretary or Equivalent, or Town/City/County Clerk) (Place corporate seal here, if available)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

**STATE CONTROLLER:
DAVID J. MCDERMOTT, CPA**

By *[Signature]*
Date 1-20-09

COLORADO DEPARTMENT OF TRANSPORTATION		Orig.Date: 07/24/2007	Project Code # (SA#): 16501	STIP#: SDR6780
DESIGN DATA		Rev.Date:	Project #: STA C800-001	
Page 1 to 4		Revision #: 0	PE Project Code: 15782	
Status: <input checked="" type="checkbox"/> Preliminary <input type="checkbox"/> Final <input type="checkbox"/> Revised		Region #: 06	Project Description: 120TH CONNECTION PH1 DESIGN-BUILD	
Submitted By PM: NAYLORB		Approved by Program Engineer:	County: 014	
Date:			Municipality: Broomfield	
Revised by:			System Code: N-NHS Non-Interstate	
Date:			Oversight By: A-Exempt	
			Planned Length: 0.700	
Geographic Location: 120TH SH128/US287/US36				
Type of Terrain: Rolling				
Description of Proposed Construction/Improvement(Attach map showing site location) PHASE 1, DIRECT CONNECTION 120TH ACROSS US36				

1 Project Characteristics (Proposed)				Median (Type): <input type="checkbox"/> Depressed <input type="checkbox"/> Painted <input checked="" type="checkbox"/> Raised <input type="checkbox"/> None	
<input checked="" type="checkbox"/> Lighting	<input checked="" type="checkbox"/> Handicap Ramps			<input checked="" type="checkbox"/> Traffic Control Signals	<input checked="" type="checkbox"/> Striping
<input checked="" type="checkbox"/> Curb and Gutter	<input type="checkbox"/> Curb Only			<input checked="" type="checkbox"/> Left-Turn Slots	<input type="checkbox"/> Continuous Width= 12
<input checked="" type="checkbox"/> Sidwalk Width= 8	<input checked="" type="checkbox"/> Bikeway Width= 10			<input checked="" type="checkbox"/> Right-Turn Slots	<input type="checkbox"/> Continuous Width= 12
<input type="checkbox"/> Parking Lane Width=	<input type="checkbox"/> Detours			Signing	<input checked="" type="checkbox"/> Construction <input type="checkbox"/> Permanent
<input type="checkbox"/> Landscaping requirements (description):				<input type="checkbox"/> Other (description):	
2 Right of Way				3 Utilities (list names of known utility companies)	
ROW &/or Perm. Easement Required	Yes/No	Est. #	Xcel Energy, City and County of Broomfield, Qwest, Comcast, AboveNet, Arista Metro Dist.		
Relocation Required	Yes	13			
Temporary Easement Required:	No				
Changes in Access:	Yes				
Changes to Connecting Roads:	Yes	4			
4 Railroad Crossings				# of Crossings:	
Recommendations :					
5 Environmental		Type:	Approved On:	Project Code # Cleared Under:	Project # Cleared Under:
		F-FONSI			
Comments:					
6 Coordination					
<input type="checkbox"/> Withdrawn Lands (Power Sites, Reservoirs, Etc.) Cleared through BLM or Forest Service Office				Irrigation Ditch Name: Dry Creek Valley Ditch Co.	
<input type="checkbox"/> New Traffic Ordinance Required <input type="checkbox"/> Modify Schedule of Existing Ordinance				Municipality: Broomfield	
Other:					
7 Construction Method		Advertised By:	NoAd Reason:	Entity / Agency Contact Name:	Phone #:
		State		Irena Motas	(303)398 6765
8 Safety Considerations				Project Under: AASHTO	
<input type="checkbox"/> Variance in Minimum Design Standards Required				Guardrail meets current standards: No	
<input type="checkbox"/> Justification Attached		<input type="checkbox"/> Request to be Submitted		Comments:	
<input type="checkbox"/> Bridge(see item 12)		<input type="checkbox"/> See Remarks			
<input type="checkbox"/> Safety project not all standards addressed					
<input type="checkbox"/> Stage Construction (explain in remarks)					
3R projects					
Safety Evaluation Complete (date):					

Page 2 of 4	Project Code #(S/A#): 16501	Project #: STA C-800-001	Revise date:
Use Columns A, B, C, D and/or E to identify facility described below			
A = 128A		B =	C =
D =		E =	
9 Traffic			
Current Year	ADT	18394	
2004	DHV	1850	
Future Year	DHV % Trucks	5	
2025	ADT	66700	
	DHV	6700	
Facility Location			
<input type="checkbox"/>	Industrial	<input type="checkbox"/>	Commercial
<input type="checkbox"/>	Residential	<input type="checkbox"/>	Other
<input type="checkbox"/>	Industrial	<input type="checkbox"/>	Commercial
<input type="checkbox"/>	Residential	<input type="checkbox"/>	Other
10 Roadway Class			
Route	128A		
Right	7.900		
Endright	8.300		
Functional Classification	P		
Facility type	D		
Rural Code	3		
11 Design Standards			
Design Variance Required (substandard items are identified with an * in 1 st column & clarify as design variance with CDOT Form #464)			
Width of Travel Lanes	12 FT	N/A	12 FT 12 FT
Shoulder width ft/outside	N/A	N/A	N/A
Shoulder width ft/outside	N/A	N/A	N/A
Design Speed	N/A	N/A	50MPH
Cross Slope			
Max. superelevation rate	6%	6%	6%
Min. Radius	N/A	N/A	1432
Min. Horizontal SSD	N/A	N/A	500
Min. Vertical SSD	N/A	N/A	500
Max Grade		N/A	6%
Design Decision Letter Required (substandard items are identified with an * in 1 st column & clarify with decision letter)			
Typical Section Type		N/A	A
# of Travel Lanes		N/A	6
Side Slope Dist. (z')		N/A	N/A
Median Width		N/A	16
Posted Speed		N/A	45MPH

Page 3 of 4	Project Code #(SA#): 16501	Project #: STA C800-001	Revise Date:	
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12 Major Structures S= to stay, R= to be removed, P= proposed new structure										
Structure ID#	▼	Length	Reference Point	Feature Intersected	Standard Width	Structure Roadway	Structural Capacity	Horizontal Clearance	Vertical Clearance	Year Built
Proposed Treatment of Bridges to Remain in Place(address bridge rail, capacity, and allowable surfacing thickness):										

13 Remarks

DESIGN-BUILD 120th Avenue Connection

Structure Identification Numbers Shown below:
 120TH over Commerce Street = Str. E-16-XV, length = 70'
 120TH over US 36 = Str. E-16-XU, length = 500'

The City of Broomfield has obtained federal funding for this project, which CDOT will administer including selection of the design/build team and the administration of federal funds for a project initiated by the Local Agency (Broomfield) under a contract with the State.

The Project Scope of Work shall consist of the final design and construction of portions of the 120th Ave. Connection and other roadways and improvements, in the City and County of Broomfield, Colorado, as generally shown on Exhibit A. The proposed Design-Build 120th Ave. Connection Project will include improvements within the Phase 1 project area and as much of the Phase 3 project areas as possible within the available project funding. The Design-Build contract between CDOT and the Design-Build Contractor will define the project elements as follows:

Phase 1 (Minimum Basic Configuration) major elements will include:

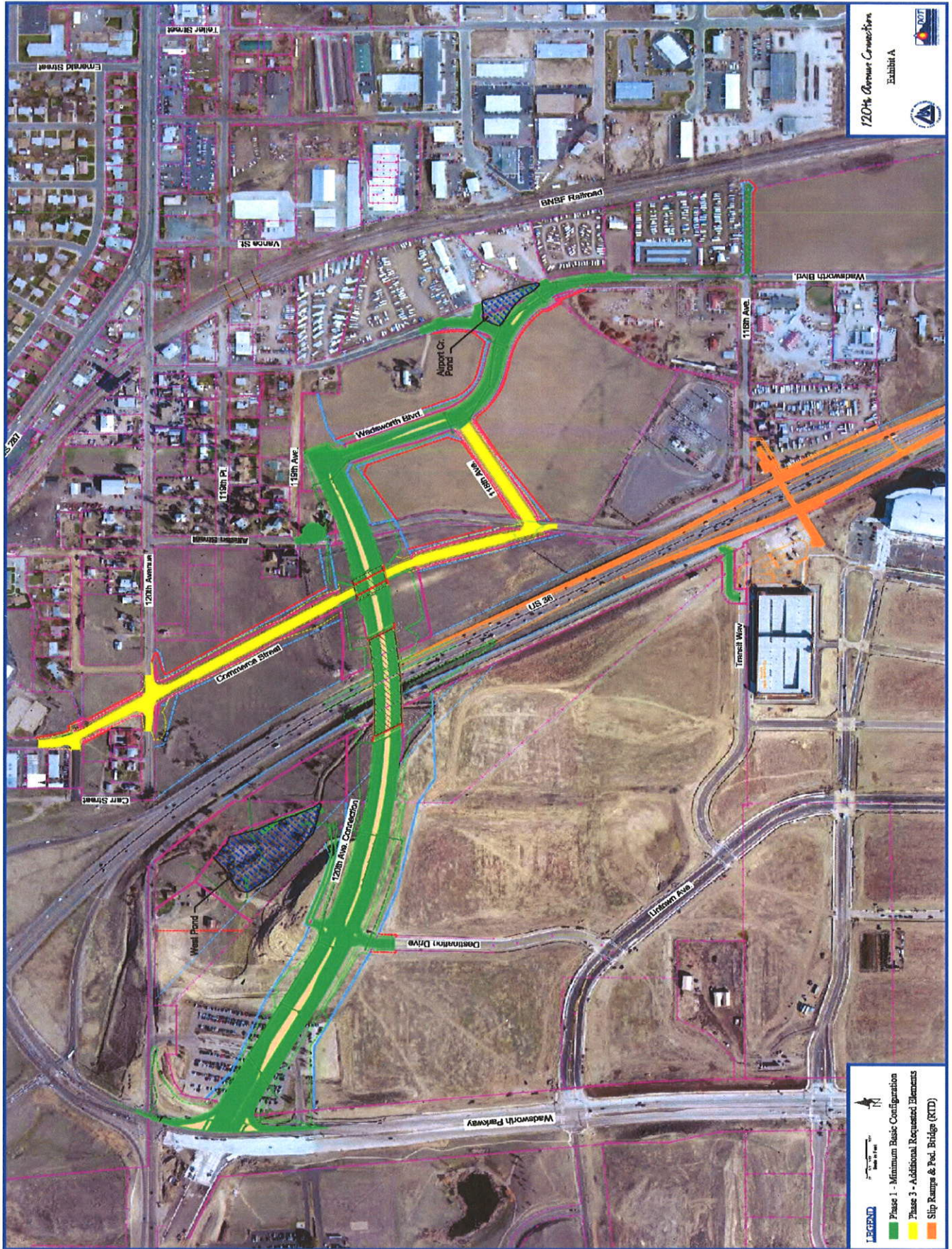
1. 120th Ave. Connection (with concrete pavement) from Wadsworth Pkwy. east to the intersection with the relocated Wadsworth Blvd.
2. Wadsworth Blvd. relocation (with composite asphalt/base pavement section) from the new intersection with 120th Ave. Connection south to tie to existing Wadsworth Blvd..
3. Wadsworth Place connection (with composite asphalt/base pavement section) from relocated Wadsworth Blvd. north to tie to existing Wadsworth.
4. Destination Drive connection (with composite asphalt/base pavement section) from the new intersection with 120th Ave. Connection south to tie to existing.
5. Cui-de-sacs at north and south terminations of Allison St..
6. Bridge structures on 120th Ave. Connection over U.S. 36 and Commerce St..
7. Relocation of City and County of Broomfield Water and Sanitary Sewer facilities from existing Allison St. to proposed Commerce St. alignment.
8. Storm water detention ponds within the City Park Basin (west of U.S. 36) and the Airport Creek Basin along with storm sewer facilities within roadways completed as a part of the Minimum Basic Configuration.
9. Signal reconstruction at Wadsworth Pkwy. and 120th Ave. Connection and signing and striping on roadways completed as a part of the Minimum Basic Configuration.
10. Full street lighting on roadways completed as a part of the Minimum Basic Configuration.

Within the maximum project funding amount, the Design-Build Contractor may propose to construct all or portions of the Phase 3 project area as Additional Requested Elements (A.R.E.s).

Phase 3 (Additional Requested Elements) major elements may include:

1. A.R.E 1
 - a. 118th Ave. (with composite asphalt/base pavement section) between proposed Commerce St. and proposed Wadsworth Blvd.
 - b. Storm sewer facilities, signing and striping, and full street lighting on 118th Ave.
2. A.R.E 2
 - a. Commerce St. (with composite asphalt/base pavement section) between existing 120th Ave., (including intersections with 120th Ave) and proposed 118th Ave..
 - b. Hydrant adjustments, storm sewer, signing and striping, and full street lighting on Commerce St. south of 120th Ave.
3. A.R.E 3
 - a. Commerce St. (with composite asphalt/base pavement section) from north tie to existing Commerce St. to existing 120th Ave., (including intersection with Park St. and property accesses).
 - b. Hydrant adjustments, storm sewer, signing and striping, and full street lighting on Commerce St. north of 120th Ave.

Page 4 of 4	Project Code #(SA#): 16501	Project #: STA C800-001	Revise Date:	
<p>EXHIBIT A</p> <p>(Attachment - next page)</p>				



RESOLUTION NO. 2008-203

A RESOLUTION AUTHORIZING AND APPROVING THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND THE STATE OF COLORADO FOR THE COLORADO DEPARTMENT OF TRANSPORTATION FOR DESIGN/BUILD OF THE BROOMFIELD 120TH AVENUE CONNECTION PROJECT

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. The intergovernmental agreement by and between the City and County of Broomfield and the State of Colorado for the Colorado Department of Transportation for Design/Build of the Broomfield 120th Avenue Connection across U.S. 36, attached hereto, is hereby approved.


Section 2. The mayor or mayor pro tem is authorized to sign and the city and county clerk is authorized to attest the Intergovernmental Agreement, in form approved by the city & county attorney.

Section 3. This resolution is effective upon its approval by the City Council.

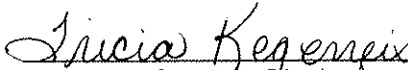
APPROVED on December 16, 2008.

THE CITY AND COUNTY OF BROOMFIELD,
COLORADO



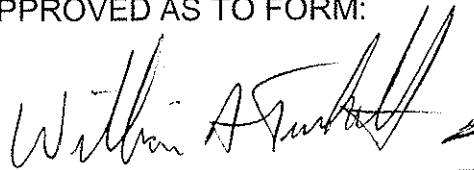


Mayor

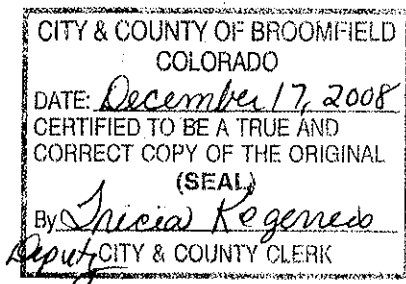


City and County Clerk, Deputy

APPROVED AS TO FORM:



City & County Attorney



RESOLUTION NO. 2008-204

A RESOLUTION AUTHORIZING AND APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR A DESIGN-BUILD CONTRACT FOR THE DESIGN AND CONSTRUCTION OF THE 120TH AVENUE CONNECTION ACROSS US 36 AND DECLARING THE INTENT OF THE CITY AND COUNTY OF BROOMFIELD TO REIMBURSE ORIGINAL EXPENDITURES FROM THE PROCEEDS OF OBLIGATIONS

WHEREAS, the City and County of Broomfield, State of Colorado (the "City and County"), is a political subdivision of the State, a body corporate and politic, and a home-rule city pursuant to Article XX of the State Constitution; and

WHEREAS, the City Council of the City and County does hereby find and determine that it is in the best interest of the City and County and the inhabitants and taxpayers that the City and County provide funds for the design and construction of the 120th Avenue Connection across US 36 pursuant to the Intergovernmental Agreement providing for the Design-Build Contract (the "Design-Build Contract"); and

WHEREAS, the City and County has within sixty (60) days or will expend funds for capital expenditures relating to the Design-Build Contract of the 120th Avenue Connection from the Transportation Projects Reserve in the Capital Improvements Fund in the approximate amount of \$ 5,739,628 plus City and County overmatches of \$ 2,766,648 for a total of \$8,506,276; and

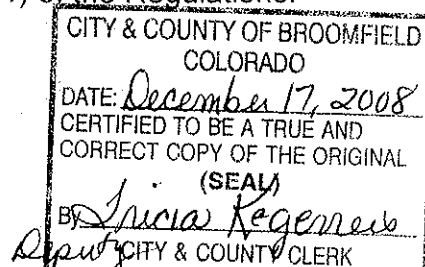
WHEREAS, the City and County intends to reimburse these original capital expenditures with the proceeds of obligations to be incurred by the City and County; and

WHEREAS, except for certain preliminary expenditures as defined in Section 1.150-2(f)(2) of the Federal Income Tax Regulations (the "Regulations"), Section 1.150-2(e)(1) of the Regulations requires the City and County to declare its official intent to reimburse original capital expenditures for the Design Purchase, as more specifically described herein, from the proceeds of an obligation incurred by the City and County in any reasonable form.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY AND COUNTY OF BROOMFIELD, COLORADO:

Section 1. That the recitals hereto are ratified, confirmed, and incorporated herein by reference.

Section 2. That this declaration of official intent is a declaration of official intent of the City and County under Section 1.150-2(e)(1) of the Regulations.



Section 3. That the Design-Build Agreement for which the original capital expenditure is paid is described as the 120th Avenue Connection across US 36, pursuant to the Intergovernmental Contract providing for the Design-Build Contract between the Colorado Department of Transportation and Broomfield dated November 18, 2008, and will be paid from the Capital Improvements Fund.

Section 4. That pursuant to CDOT Intergovernmental Agreement 16501, the principal amount of the obligations for the portion of the Design-Build to be reimbursed is \$ 8,506,276.

Section 5. That all actions heretofore taken by the City and County and by the officers thereof or on their behalf not inconsistent herewith directed toward the official intent to reimburse expenditures are hereby ratified, approved, and confirmed.

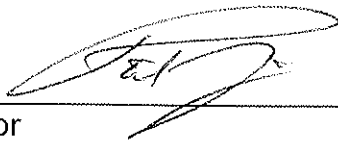
Section 6. That if any portion or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such portion or provision shall not affect any of the remaining provisions of this Resolution, the intention being the same are severable.

Section 7. That this resolution is effective upon its approval by the City Council.

APPROVED on December 16, 2008.


THE CITY AND COUNTY OF BROOMFIELD,
COLORADO





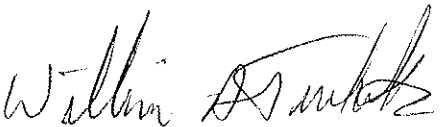
Mayor

ATTEST:



City and County Clerk *Deputy*

APPROVED AS TO FORM:



City and County Attorney

EXHIBIT C FUNDING PROVISIONS

STA C800-001 (16501)

A. The State has estimated the total cost the Work to be \$35,732,226.00 which is to be funded as follows:

1 BUDGETED FUNDS		
a. Federal Funds (FY 05 Demo 37 @ 80%)	\$273,751.00	
b. Federal Funds (FY 06 Demo 37 @ 80%)	\$275,768.00	
c. Federal Funds (FY 07 Demo 37 @ 80%)	\$294,792.00	
d. Federal Funds (FY 05 Demo 68 @ 80%)	\$342,189.00	
e. Federal Funds (FY 06 Demo 68 @ 80%)	\$344,710.00	
f. Federal Funds (FY 07 Demo 68 @ 80%)	\$368,490.00	
g. Federal Funds (FY 05 Demo 100 @ 82.79%)	\$171,000.00	
h. Federal Funds (FY 06 Demo 100 @ 82.79%)	\$344,520.00	
i. Federal Funds (FY 07 Demo 100 @ 82.79%)	\$460,358.00	
j. Federal Funds (FY 07 STP Metro @ 82.79%)	\$5,545,451.00	
k. Federal Funds (FY 08 STP Metro @ 82.79%)	\$10,550,758.00	
l. Federal Funds (FY 09 STP Metro @ 82.79%)	<u>\$8,254,163.00</u>	
Total Federal Funds		\$27,225,950.00
m. Local Agency Match (FY 05 Demo 37 @ 20%)	\$68,438.00	
n. Local Agency Match (FY 06 Demo 37 @ 20%)	\$68,942.00	
o. Local Agency Match (FY 07 Demo 37 @ 20%)	\$73,698.00	
p. Local Agency Match (FY 05 Demo 68 @ 20%)	\$85,547.00	
q. Local Agency Match (FY 06 Demo 68 @ 20%)	\$86,178.00	
r. Local Agency Match (FY 07 Demo 68 @ 20%)	\$92,123.00	
s. Local Agency Match (FY 05 Demo 100 @ 17.21%)	\$35,547.00	
t. Local Agency Match (FY 06 Demo 100 @ 17.21%)	\$71,617.00	
u. Local Agency Match (FY 07 Demo 100 @ 17.21%)	\$95,697.00	
v. Local Agency Match (FY 07 STP Metro @ 17.21%)	\$1,152,762.00	
w. Local Agency Match (FY 08 STP Metro @ 17.21%)	\$2,193,242.00	
x. Local Agency Match (FY 09 STP Metro @ 17.21%)	<u>\$1,715,837.00</u>	
Total Local Agency Matching Funds		\$5,739,628.00
y. FY 07 Local Agency Overmatch	\$1,294,000.00	
z. FY 08 Local Agency Overmatch	\$444,000.00	
aa. FY 09 Local Agency Overmatch	<u>\$348,000.00</u>	
Total Local Agency Overmatch		\$2,086,000.00
bb. Local Agency Matching for CDOT - Incurred Non-Participating Costs		\$680,648.00
(Including Non-Participating Indirects)		
TOTAL BUDGETED FUNDS		\$35,732,226.00

2 ESTIMATED CDOT-INCURRED COSTS			
a. Federal Share			\$27,225,950.00
	(82.50% of Participating Costs)		
b. Local Share			
Local Agency Share of Participating Costs	\$5,739,628.00		
Non-Participating Costs (Including Non-Participating Indirects)	\$680,648.00		
Estimated to be Billed to Local Agency			\$6,420,276.00
c. Local Agency Overmatch			\$2,086,000.00
TOTAL ESTIMATED CDOT-INCURRED COSTS			\$35,732,226.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY			
a. Federal Funds Budgeted (1a)			\$27,225,950.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			\$27,225,950.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY			\$0.00
FOR CDOT ENCUMBRANCE PURPOSES			
Total Encumbrance Amount (\$0.00 divided by 82.50%)			\$0.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109			\$0.00
Net to be encumbered as follows:			\$0.00
<i>Funds are currently not available. Funding to be added after Federal Authorization of Design or Construction Phases, either by Formal Amendment or Option Letter.</i>			
WBS Element <<<<<>>>>	Design	3020	\$0.00
WBS Element 16501.20.10	Const	3301	\$0.00

B. The matching ratio for the federal participating funds for this project is 80% to 82.79% federal-aid funds (CFDA #20 2050) to 17.21% to 20% to Local Agency funds, it being understood that such ratio applies only to the \$32,965,578.00 (\$27,225,950.00 Federal Funds and \$5,739,628.00 Local Agency Matching Funds) that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$32,965,578.00, and additional federal funds are made available for the project, the Local Agency shall pay the percentage applicable for the additional funding and all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the local agency shall pay all such excess costs.

If the total participating cost of performance of the Work is less than \$32,965,578.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

- C. The maximum amount payable to the Local Agency under this contract shall be \$0.00 (For CDOT accounting purposes, the federal funds of \$27,225,950.00, the local matching funds of \$5,739,628.00, local matching funds for CDOT incurred cost of \$680,648.00 and local overmatching funds of \$2,086,000.00 will be encumbered for a total encumbrance of \$35,732,226.00), unless such amount is increased by an appropriate written modification to this contract executed before any increased cost is incurred. ***Funds are currently not available. Funding to be added after Federal Authorization of Design or Construction Phases, either by Formal Amendment or Option Letter.*** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.
- D. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from federal and/or state and/or Local Agency sources, as applicable. Should these sources, either federal or Local Agency, fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.

Certification for Federal-Aid Contracts

The contractor certifies, by signing this contract, to the best of its knowledge and belief, that:

1. 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 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.
2. 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 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.

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

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 23. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its contractor agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The contractor (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (if applicable).

A copy of the DBE Program is available from and will be mailed to the contractor upon request:

Business Programs Office
Colorado Department of Transportation
4201 East Arkansas Avenue, Room 287
Denver, Colorado 80222-3400

Phone: (303) 757-9234

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below
AND cannot be used in place of exercising a formal amendment.

Exhibit _____

Date:	State Fiscal Year:	Option Letter No.	CLIN Routing #
-------	--------------------	-------------------	----------------

Vendor name: _____

A. SUBJECT: (Choose applicable options listed below AND in section B and delete the rest)

1. Option to renew (for an additional term) applies to Highway and Signal maintenance contracts ONLY; this renewal cannot be used to make any change to the original scope of work;
2. Level of service change within current term due to an unexpected Local overmatch on an overbid situation ONLY;
3. Option to add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads);
4. Option to update funding (a new Exhibit C must be attached with the option letter and shall be labeled C-1 (future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.)

B. REQUIRED PROVISIONS. All Option Letters shall contain the appropriate provisions set forth below:

(Insert the following language for use with Options #1):

In accordance with Paragraph(s) _____ of contract routing number (insert *FY, Agency code, & CLIN routing #*), between the State of Colorado, Department of Transportation, and (*insert contractor's name*) the state hereby exercises the option for an additional term of (*insert performance period here*) at a cost/price specified in Paragraph/Section/Provision _____ of the original contract, AND/OR an increase in the amount of goods/services at the same rate(s) as specified in Paragraph _____ of the original contract.

(Insert the following language for use with Option #2):

In accordance with the terms of the original contract (*insert FY, Agency code & CLIN routing #*) between the State of Colorado, Department of Transportation and (*insert contractor's name here*), the State hereby exercises the option to record a level of service change due to unexpected overmatch dollars due to an overbid situation. The contract is now increased by (*indicate additional dollars here*) specified in Paragraph/Section/Provision _____ of the original contract.

(Insert the following language for use with Option #3):

In accordance with the terms of the original contract (*insert FY, Agency code & CLIN routing #*) between the State of Colorado, Department of Transportation and (*insert contractor's name here*), the State hereby exercises the option to add an overlapping phase in (*indicate Fiscal Year here*) that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*). Total funds for this contract remain the same (*indicate total dollars here*) as referenced in Paragraph/Section/Provision/Exhibit _____ of the original contract.

(Insert the following language for use with Option #4):

In accordance with the terms of the original contract (*insert FY, Agency code & CLIN routing #*) between the State of Colorado, Department of Transportation and (*insert contractor's name here*), the State hereby exercises the option to update funding based on changes from state, federal, local match and/or local agency overmatch funds. The contract is now (*select one: increased and/or decreased*) by (*insert dollars*)

Exhibit F

here) specified in Paragraph/-Section/-Provision/Exhibit _____ of the original contract. A new Exhibit C-1 is made part of the original contract and replaces Exhibit C. (The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.)

(The following language must be included on all options):

The amount of the current Fiscal Year contract value is (*increased/decreased*) by (\$ *amount of change*) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (*indicate Fiscal Year*). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____).

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

APPROVALS:

For the Contractor:

Legal Name of Contractor

By: _____
Print Name of Authorized Individual

Signature: _____

Date: _____

Title: Official Title of Authorized Individual

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**State Controller
David J. McDermott, CPA**

By: _____

Date: _____

Issuance date: July 1, 2008
Updated: June 12, 2008

LOCAL AGENCY
CONTRACT ADMINISTRATION
CHECKLIST

NOT APPLICABLE TO THIS AGREEMENT

CDOT Form 1243

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

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ATTACHMENTS

- A. Employment Preference for Appalachian Contracts
(included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

- Section I, paragraph 2;
- Section IV, paragraphs 1, 2, 3, 4, and 7;
- Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

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

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

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

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

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

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant

of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

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

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

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

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

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

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

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

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementations of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

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

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

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

discriminatory wage practices.

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

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

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

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

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

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

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

Exhibit H

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

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

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

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

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics.

The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid

the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

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

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

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

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

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

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

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

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

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize

Exhibit H

apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

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

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

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

c. Helpers:

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

5. Apprentices and Trainees (Programs of the U.S. DOT):

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

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to

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

7. Overtime Requirements:

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

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

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a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

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

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

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

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

e. The weekly submission of a properly executed certifica-

tion set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to

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

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

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

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

VIII. SAFETY: ACCIDENT PREVENTION

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

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following

notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

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

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

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such

requirements.

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

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

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

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

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

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

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary 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 Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

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," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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.

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

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 Covered Transactions:

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

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

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS OR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

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

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

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

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

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

FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. The "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, **except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions.** The requirements of 49 CFR 18 include, without limitation:

1. the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d);
2. the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30;
3. the Local Agency/Contractor shall comply with section 18.37 concerning any sub-grants;
4. to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-grant procedures, as applicable;
5. the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or sub-grantees).

C. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-grants for construction or repair).

D. The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by grantees and sub-grantees when required by Federal grant program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and sub-grantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-grants of amounts in excess of \$100,000).

G. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. 42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et. seq.. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds;

K. The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of this contract.)

M. The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

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

2. Nondiscrimination. The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

4. Information and Reports. The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

5. Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or;
- b. Cancellation, termination or suspension of the contract, in whole or in part.

6. Incorporation of Provisions. The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.