**CONTRACT BETWEEN USRC AND CONSULTANT**

 The following sets forth the basic information concerning the Contract between USRC and Consultant which follows. This page is referred to as the "Cover Page".

Project: Restoration of the Historic Legionnaire Statues and Vestibules in the Main Hall

Washington Union Station

Contracting

Party: Union Station Redevelopment Corporation (“USRC”)

 750 First Street NE, Suite 1010

 Washington, D.C. 20002

 Attention: Nzinga Bryant (nbryant@usrcdc.com)

 Phone: 202.222.0271

Consultant:

Contract Date: , 2019

Contract Amount: The Contract Amount is set forth on **Exhibit E** attached hereto.

Contract Work

and Schedule: The Scope of Work (the “Contract Work”) is set forth on **Exhibit D** attached hereto. The Contract Schedule is set forth on **Exhibit F** attached hereto.

Exhibits: Exhibit A – Required Insurance

 Exhibit B – Request for Proposals, dated April 18, 2019

 Exhibit C – Consultant’s Proposal, dated May 20, 2019

 Exhibit D – Scope of Work (the “Contract Work”)

 Exhibit E – Contract Amount

 Exhibit F – Contract Schedule

 Exhibit G – Davis-Bacon Act and other Required Federal Clauses and Applicable Wage Determination

 Exhibit H – USRC Expense Reimbursement Policy

This CONTRACT (“Contract”) is made as of the \_\_\_\_\_\_\_\_ day of , 2019 by and between UNION STATION REDEVELOPMENT CORPORATION (“USRC”), a District of Columbia non-profit organization, created pursuant to the Union Station Redevelopment Act of 1981 and having its usual place of business at 750 First Street NE, Suite 1010, Washington, DC, 20002, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Consultant”), a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, each being a “Party” and together collectively, the “Parties”.

 WHEREAS, USRC is the lessee from the United States Government, acting through the Federal Railroad Administration, of Union Station in Washington, D.C. (the “Station”); and

 WHEREAS, following the completion in October, 2017 of the restoration of four Roman Legionnaire statues located in the West Hall of the Station, USRC applied to the District of Columbia (the “District”), a municipal corporation, acting by and through the District Department of Transportation (“DDOT”) for a grant to fund the cleaning and restoration of an additional thirty six (36) Roman Legionnaire statues at the Gallery level in the Main Hall of the Station; and

 WHEREAS, the Scope of Work, in addition to the cleaning and restoration of the thirty- six (36) Roman Legionnaire statues, includes the initial preparation of a treatment plan and the preparation and submittal of a final report (collectively, the “Base Bid Project”); and

 WHEREAS, funding for this Base Bid Project has been approved by DDOT and is through a 2018 matching grant to DDOT from the Federal Highway Administration through its Transportation Alternatives Program (“TAP”), for which USRC partnered with DDOT; and

 WHEREAS, USRC also applied to the District through DDOT for a second grant to fund the cleaning and restoration of an additional six (6) Roman Legionnaire statues at the Gallery window sill level of the south exterior elevation of the building, and for the cleaning and restoration of surfaces in the three (3) south vestibules and three (3) north vestibules into the Main Hall; and

 WHEREAS, the Scope of Work of the second grant, in addition to the cleaning and restoration of the six (6) Roman Legionnaire statues and the cleaning and restoration of the six (6) Vestibules, includes the initial preparation of a treatment plan and the preparation and submittal of a final report (collectively, the Alternate “A” Project) (the Base Bid Project and the Alternate “A” Project being collectively the “Project”); and

 WHEREAS, funding for the Alternate “A” Project, which has not yet been finalized, is through a 2019 matching grant to DDOT from the Federal Highway Administration through its TAP, for which USRC partnered with DDOT; and

 WHEREAS, funding for the Base Bid Project and funding for the Alternate “A” Project are managed in separate grant accounts by DDOT and may not be combined; and

 WHEREAS, USRC desires the work of the Base Bid Project and the work of the Alternate “A” Project to be undertaken by a single firm through a single contract; and

 WHEREAS, USRC desires the work to be conducted sequentially – first the Base Bid Project, and second, the Alternate “A” Project; and

 WHEREAS, USRC will not issue a Notice to Proceed for the Alternate “A” Project if funding is not received from DDOT by USRC; and

 WHEREAS, in furtherance of the Project, on April 18, 2019, USRC issued a Request for Proposals (the “RFP”), which RFP is attached hereto as **Exhibit B** and made a part hereof; and

 WHEREAS, in response to the RFP, Consultant submitted its Proposal, dated May 20, 2019 (the “Consultant’s Proposal”), which Proposal is attached hereto as **Exhibit C** and made a part hereof; and

 WHEREAS, after review, Consultant has been determined by USRC to have submitted the Proposal which represents the best value to USRC; and

 WHEREAS, USRC and Consultant desire to set forth their understandings concerning the performance by Consultant of the Contract Work and the compensation therefor.

 NOW, THEREFORE, in consideration of the mutual promises and terms contained herein, the parties do hereby agree as follows:

# DEFINITIONS

## Applicable Law means all federal, state, local, municipal and District of Columbia statutes, regulations, rules, ordinances, directives, codes, orders, decrees or government authorizations applicable in any way to the Contract Work or to the individuals or entities performing any part of the Contract Work.

## Claim means a demand by a Party for the payment of a sum of money or other relief based upon the terms of this Contract. The term shall also include other disputes or controversies between the Parties that may arise out of, or relate to, this Contract or the terms thereof.

## Documents means all communications, reports, statements, presentations, drawings, schematics, models, renderings, illustrations or specifications, captured in any written, graphic, tangible, digital or electronic form whatsoever, including any copies thereof.

## Licenses and Permits means any registrations, licenses, certifications, permits, approvals or professional credentials applicable to the Contract Work or to the individuals or entities performing any part of the Contract Work.

# CONSULTANT OBLIGATIONS AND WARRANTIES

## Consultant Qualifications and Warranties. Consultant represents and warrants to USRC that it is an experienced historic preservation and construction firm and that it has the expertise to perform, and will perform, each and every task, element and service comprising the Contract Work (Exhibit D attached hereto and made a part hereof). Consultant will use qualified personnel and suitable equipment and materials to perform the Contract Work. In performing the Contract Work, Consultant will also comply with all the terms and conditions of the RFP and the Consultant’s Proposal (Exhibits B and C, respectively). Consultant warrants, represents and agrees that the Contract Work will conform in all respects to the requirements of this Contract and all Exhibits thereto; that such Contract Work will be free from defects; and that Contract Work failing to so conform will be considered defective. Prior to substituting key team members during the Term of this Contract, Consultant shall notify USRC and obtain its prior approval.

## Consultant Licenses and Permits. Consultant shall obtain, at Consultant’s own expense, all Licenses and Permits required by Applicable Law before or in connection with its performance of the Contract Work and shall maintain such Licenses and Permits throughout the Contract Term, as defined below in Article 6. Consultant shall ensure that each individual or entity employed or subcontracted to perform any part of Consultant’s obligations hereunder maintains all applicable Licenses and Permits throughout the Contract Term. Before the commencement of the Contract Work and at any time during the Contract Term, USRC shall have the right to inspect and obtain copies of all such Licenses and Permits. Consultant shall retain copies of all such Licenses and Permits in compliance with Section 11.2.

## Consultant Compliance with Applicable Law. Consultant and its employees and representatives shall at all times comply with Applicable Law. If any discrepancy or inconsistency should be discovered between the equipment, facilities or services described in the RFP or the Consultant’s Proposal, on the one hand, and Applicable Law, on the other hand, Consultant shall immediately notify USRC of such discrepancy or inconsistency and shall comply with any orders or instructions issued by USRC.

## Violations of Applicable Law, License or Permit. Consultant will notify USRC in writing (a) if Consultant receives a notice of violation of any Applicable Law; (b) of any failure to obtain or maintain any License or Permit or actual or threatened revocation of a License or Permit; or (c) if a claim is made or litigation is commenced against Consultant that could affect the performance of the Contract Work.

## Consultant to Avoid Injury or Damage. Consultant will at all times perform the Contract Work in a manner to avoid the risk of injury to its employees and other persons and damage to property, including materials or equipment incorporated or utilized in the Contract Work. Consultant acknowledges that its employees and representatives have visited the areas in and around Union Station (50 Massachusetts Ave., NE, Washington, DC 20002) where the Contract Work will be performed (the “*Job Site*”) and are familiar with all Job Site conditions that might affect the performance of the Contract Work.

## Debris Removal; Access. When Consultant performs work at the Job Site, it shall be part of the Contract Work, as set forth in part 20 of the Additional Conditions of the Project Specifications (Exhibit D to the RFP) that Consultant continuously clean the Job Site of any debris and excess materials and, at the end of each day, leave its working areas in broom-clean condition. Upon completion of the Contract Work and before final payment pursuant to § 5.4, the Consultant shall clear the Job Site of all surplus and excess or discarded materials. If Consultant fails to perform these tasks, USRC may perform, or have performed, any cleanup and shall either (a) be reimbursed by Consultant within ten (10) business days following Consultant’s receipt of an invoice, or (b) deduct the cost thereof from amounts otherwise payable to Consultant. Consultant shall also ensure that the Contract Work, at all times, is performed in a manner that affords reasonable and safe access, for vehicles, tenants and pedestrians, including the travelling public and the general public, to the Job Site and all adjacent areas so as to ensure the least possible obstruction, with safety and convenience of the public being paramount.

## Consultant’s Financial Responsibility. Consultant represents and warrants that Consultant and its subcontractors are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Contract Work and perform all obligations hereunder. During the Term of this Contract, the Consultant shall have a Certificate of Good Standing with the District of Columbia Department of Consumer and Regulatory Affairs or the Office of Tax and Revenue. Consultant shall obtain all Required Insurance Coverages as specified in Exhibit A attached hereto.

## Inspection of Contract Work; Maintenance. USRC and its authorized representatives are authorized to inspect at any reasonable time all or any part of the Contract Work to determine conformity with the requirements of this Contract and all Exhibits attached thereto. When all or any part of the Contract Work is federally funded or funded in whole or in part by DDOT, the Contract Work shall also be subject to inspection by the appropriate federal agency or by DDOT. The Consultant and any subcontractor shall also permit inspection at any reasonable time by any Federal, State or local agency authorized to investigate compliance with Federal, State or local laws and regulations. Furthermore, during the Contract Term and until final acceptance, the Consultant shall continuously maintain the Contract Work and shall take any reasonable precaution against, and shall be responsible for, injury or damage to the Contract Work.

## Consultant Oversight of Subcontractors and Sub-subcontractors. Consultant agrees to require its subcontractor and sub-subcontractors to indemnify and hold harmless USRC and the other Indemnified Parties identified in Section 8.2 to the same extent that Consultant is required to indemnify and hold harmless USRC and the other Indemnified Parties. Consultant hereby assumes responsibility for ensuring that its subcontractors and their respective sub-subcontractors comply during and after the Contract Term with the Insurance Obligations of Consultant as set forth in Exhibit A attached hereto. Consultant’s subcontracting of a part of the Contract Work does not relieve Consultant of its responsibility for fulfilling the requirements of this Contract.

## USRC Tax-Exempt Status. USRC is exempt from District of Columbia sales and use tax pursuant to Certificate Number 350000084025. Copies will be furnished by USRC to the Consultant for use in connection with the purchase of supplies, goods, materials, equipment and other services necessary for the performance of the Contract Work which would otherwise be subject to such taxes.

# TIME FOR COMPLETION, TIME EXTENSIONS AND DELAYS

## Commencement of the Contract Work. After this Contract is executed, USRC will issue a Notice to Proceed which will stipulate the date when the Consultant shall begin the Contract Work. The Notice shall be given in the manner prescribed by §11.7. When funding for the Alternate “A” Project is finalized, USRC will, in its sole discretion, issue to Consultant a Notice to Proceed in the manner prescribed by §11.7 to begin that portion of the Project.

## Time is of the Essence. Time is of the essence for the completion of the Contract Work. Consultant agrees that it will not interrupt or delay the Contract Work because of any dispute with USRC, but will continue to perform the Contract Work diligently to completion, and will later negotiate in good faith for settlement of the Dispute, as defined in §10.1, provided USRC continues to pay Consultant for services undisputed by USRC.

## Adherence to the Schedule; Coordination. Consultant shall strictly adhere to the schedule for the Contract Work as the same is set forth in Exhibit F attached hereto and made a part hereof (the “*Schedule*”). The Consultant shall furnish sufficient forces, facilities and equipment and shall work such hours to ensure prosecution of the Contract Work in accordance with the Schedule. Deviations from the Schedule shall be promptly reported to USRC. If Consultant falls significantly behind the Schedule, Consultant will be required to take the necessary operational steps to regain adherence to the Schedule, at its cost and expense. Consultant shall be obligated to coordinate the Contract Work under the Schedule so as not to unnecessarily interfere with or hinder the progress of the work being performed by other contractors and subcontractors in the vicinity of the Project, as applicable.

## Time Extensions. Time Extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not limited to, acts of God, acts of the public enemy, acts of any governmental authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Consultant or its subcontractors or suppliers.

## Delays. Notwithstanding anything in this Contract to the contrary, an extension of time for performance of the Contract Work shall be the sole remedy of the Consultant for any (i) delay in the commencement, prosecution or completion of the Contract Work attributable to adverse weather conditions; (ii) hindrance or obstruction in the performance of the Contract Work; (iii) loss of productivity; or (iv) other similar claims (collectively referred to as “*Delays*”) whether or not such Delays are foreseeable unless a Delay is caused by the acts of USRC constituting active interference with the Consultant’s performance of the Contract Work, and only to the extent such acts continue after the Consultant furnishes USRC with notice of such interference. In no event shall the Consultant be entitled to any compensation or recovery of any damages in connection with any Delay attributable to adverse weather conditions, including, without limitation, consequential damages, lost opportunity costs, impact damages or similar remunerations. USRC’s exercise of any of it rights or remedies under this Contract shall not be construed as active interference with the Consultant’s performance of the Contract Work. Any Claim for an extension of time shall be made by Consultant to USRC not more than ten (10) calendar days after commencement of the event giving rise to the Delay; otherwise, the Claim shall be waived; provided, however, that in the case of a continuing Delay, only one Claim to USRC is necessary.

# Changes; DIFFERING sITE CONDITIONS; STOP WORK ORDERS

## Contract Modifications. USRC may add or subtract from the scope of Consultant’s Contract Work by written modification to this Contract (“*Contract Modification*”) which shall incorporate a change order (“*Change Order*”) prepared, as set forth below. Contract Modifications and Change Orders may only be issued in writing. Without such written authorization from USRC, no course of conduct or dealings between the Parties, no express or implied acceptance of additions or changes to the Contract Work and no claim of unjust enrichment of USRC shall be the basis for any Claim for an increase in the Contract Amount or any extension of time for completion of the Contract Work as provided in § 10.1 or §§ 3.4.and 3.5 of this Contract, respectively. Contract Modifications and Change Orders may only be issued in a written notice given pursuant to § 11.7. Consultant shall promptly perform the Contract Work as modified.

## Change Orders; Contract Price Adjustments. Before USRC issues a Contract Modification incorporating a Change Order, Consultant shall prepare a draft Change Order and forward it to USRC. If Consultant contends that the Change Order results in a net increase in Consultant’s cost of performing the Contract Work, within ten (10) calendar days after delivery of the draft Change Order, Consultant shall provide USRC with a detailed estimate of the additional cost. The Parties shall negotiate in good faith to agree on an equitable adjustment to Consultant’s compensation. If the Parties do not agree on the amount of such adjustment at that time, USRC shall nevertheless issue a Contract Modification which shall incorporate the Change Order. Consultant shall comply with the Contract Modification and Change Order and any Disputes about the amount of adjustment shall be treated as Disputes subject to all the requirements of Article 10 of this Contract, including the notice provisions thereof.

## Differing Site Conditions. If, during the course of Contract performance, the Consultant observes or discovers physical conditions at the Job Site that the Consultant believes are different in a material way from those that are indicated, described or shown on or in this Contract, including the Exhibits thereto, Consultant shall notify USRC within ten (10) business days after the condition or conditions is, or are, observed or discovered. USRC shall undertake a review of the matter. If USRC determines that a modification of the Contract Amount or the time for completion of the Contract Work is merited, an equitable adjustment will be made by written Contract Modification pursuant to §§ 4.1 and 4.2. No Claim under this § 4.3 shall be allowed unless the Consultant has given the required notice; provided, however, that the time for such notice may be extended by USRC.

## Stop Work Order. USRC may at any time, by notice to Consultant, require Consultant to stop all or part of the performance of the Contract Work for a period of up to ninety (90) calendar days after notice to Consultant (“Stop Work Order”). Upon receipt of the Stop Work Order, Consultant shall comply with its terms and take all reasonable steps to minimize the costs applicable to the Contract Work or the portion of the Contract Work covered by the Stop Work Order during the period of work stoppage. Within a period of ninety (90) calendar days after Consultant’s receipt of a Stop Work Order, or within any extension of that period to which USRC and Consultant have agreed in writing, USRC shall either cancel the Stop Work Order or terminate this Contract in whole or in part pursuant to § 6.4 hereof. Consultant shall resume work upon cancellation or expiration of any Stop Work Order. An equitable adjustment shall be made in the Schedule or in the Contract Amount, or both, if the Stop Work Order causes an increase in the time required for performance of the Contract Work or in the Consultant’s costs, provided that the issuance of the Stop Work Order was not due to the fault or negligence of the Consultant. The equitable adjustment shall be made pursuant to a written Contract Modification issued in accordance with §§ 4.1 and 4.2 above.

#  Invoices AND Final Payment

## USRC will compensate the Consultant for services rendered in the performance of the Contract Work in accordance with Exhibit E attached hereto and made a part hereof (the “Contract Amount”). The Contract Amount includes Consultant’s time, labor, materials and travel costs, it any. The compensation to be paid Consultant is complete and, except as modified by a Contract Modification issued pursuant to Article 4 hereof, no additional compensation will be allowed. Any additional approved expenses shall not include any mark-up and shall be reimbursed in accordance with the USRC Expense Reimbursement Policy attached hereto as Exhibit H and made a part hereof.

## Once a month, Consultant shall invoice USRC for its fees incurred during that month, less ten percent (10%) retainage which will not be released until final payment. ***Consultant understands and agrees that the budgets of, accounting for and invoicing for the Base Bid portion and the Alternate “A” portion of the Project, respectively, must be kept completely separate. Invoices must clearly designate the portion of the Project being billed.*** Each such invoice shall include (i) a detailed statement of all services performed as part of the Contract Work for that month; (ii) a comparison of the services scheduled to be performed with those actually performed; (iii) a list of all subcontractors and major suppliers with the itemized cost of their services detailed (if applicable); and (iv) Consultant’s certification that the services for which payment is sought have been completed in accordance with this Contract, that the Consultant has fully paid or otherwise made satisfaction for any work ordered by it and materials furnished to it, and that none of those performing or furnishing such work has any claim, demand or lien against USRC, the United States of America, acting through the Federal Railroad Administration, Union Station Investco, LLC or Jones Lang LaSalle Americas, Inc, or their property, through the date of the invoice. Subject to approval of the Contract Work to date by USRC and provided that the information required to be submitted by Consultant pursuant to this § 5.2 has been submitted and approved, payment will be made by USRC within forty-five (45) calendar days following receipt of the applicable invoice.

## Invoices. Consultant shall send all invoices to USRC in the manner specified in Section 11.7, except that copies of invoices are not required to be forwarded to USRC’s counsel.

## Final Payment. Final payment shall not be due from USRC until Consultant has delivered to USRC (a) an affidavit that each and every service required to be performed as part of the Contract Work has been fully and satisfactorily performed and that the Consultant and any subcontractor has made the required payments to subcontractors and suppliers from the proceeds of prior payments; (b) a general release of all claims against the USRC arising out of, or in any way connected with, this Contract, except those that have been asserted prior to final payment and are pending resolution; and (c) a complete release of all liens arising out of the performance of the Contract Work or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to USRC indemnifying USRC against any lien. If any lien remains unsatisfied after all payments are made, Consultant shall pay such lien on demand or refund to USRC all monies that USRC may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees. Any payment due to Consultant hereunder shall be reduced by an amount up to one hundred twenty percent (120%) of the amount of any lien arising out of or related to Consultant’s performance under this Contract until such lien is removed as of record by payment or bonding. Final payment, including payment of the retainage previously withheld, shall be made by USRC only upon a determination that the Contract Work, including the preparation and acceptance by USRC of the Consultant’s final report, has been fully performed in accordance with the terms of this Contract and all Exhibits thereto and has been accepted, which determination shall be made by USRC after final inspection of the Contract Work.

## Consultant Errors or Omissions; Warranty of Construction. Notwithstanding anything to the contrary contained herein, no compensation shall be paid or claimed by Consultant for services required to correct deficiencies attributable to errors or omissions of Consultant. Furthermore, if, within one (1) year of final payment to Consultant pursuant to § 5.4 hereof, USRC determines that all or any portion of the Contract Work has not been completed in accordance with the terms and conditions of this Contract, USRC shall notify the Consultant. Unless the deficiency was caused by alterations to the Contract Work not executed by the Consultant, improper or insufficient maintenance or normal wear and tear, the Consultant shall correct the defective work promptly at its cost and expense. In addition, the Consultant shall repair at its own expense any damage to real or personal property owned or controlled by USRC, when the damage is the result of the Consultant’s failure to conform to the requirements of the Contract. The corrected Contract Work or the repaired USRC property shall then be subject to an additional one (1) year period for correction of any deficiencies. If the Consultant fails to correct the defective Contract Work or repair the damaged USRC property, after notification by USRC, USRC may cure the deficiency or repair the property and charge the costs thereof to the Consultant. The provisions of this § 5.5 shall survive the termination of this Contract.

## USRC’s Right to Withhold Payment. Notwithstanding anything to the contrary contained herein, USRC shall have the right to withhold from any payment due to Consultant such sums as are reasonably necessary to protect USRC against any loss or damage that might result from or be in any way connected to: the work of Consultant or its subcontractors; failure by Consultant to perform its obligations hereunder; or claims filed against USRC relating to Consultant’s services under this Contract. Any sums withheld by USRC as provided in this §5.6 and subsequently determined by USRC to be due and owing to Consultant, shall be paid by USRC to Consultant within three (3) business days of USRC’s determination.

# Contract Term and Termination

## Contract Term. This Contract shall remain in full force and effect from the date of its execution until (a) two hundred fifty nine (259) calendar days (37 Weeks) from the issuance of the Notice to Proceed pursuant to §3.1 hereof or, if that date is extended pursuant to a Contract Modification issued in accordance with § 4.1, to that new date (the “*Base Bid Project* *Completion Date*”); or (b) if Notice to Proceed is issued to Consultant to perform the Alternate “A” Project , this Contract shall additionally remain in force and effect from the date of issuance of that Notice to Proceed until one hundred forty (140) calendar days (20 weeks) from the issuance of that Notice to Proceed, or if that that date is extended pursuant to a Contract Modification issued in accordance with §4.1 to that new date (the “*Alternate “A”* *Project Completion Date”*; or (c) termination of the Contract before either Completion Date pursuant to the provisions of §§ 6.3 or 6.4. The period from the date on which this Contract is executed to the earlier of (x) the date on which this Contract is terminated or (y) the Base Bid Project Completion Date or the Alternate “A” Completion date ,as the case may be, is referred to herein as the “*Contract Term*.”

## Breach by Consultant. If Consultant breaches any obligation of this Contract, USRC will notify Consultant of such breach in writing pursuant to § 11.7 hereof. Consultant will have fifteen (15) business days following receipt of the notice within which to remedy the breach as set forth in USRC’s notice (the “*Cure Period*”). USRC, in its sole discretion, may extend the Cure Period. Either (a) the failure by Consultant to remedy the breach within the Cure Period or any extension thereof, or (b) a second breach by Consultant (even if different in nature) before the Completion Date, shall constitute an “*Event of Default*” entitling USRC to exercise any and all remedies available to it at law or in equity as well as those rights set forth in § 6.3 below. Upon the occurrence of an Event of Default, USRC, in its sole discretion, may correct the deficiencies caused by Consultant’s breach and pursue the Consultant for the full cost of USRC’s corrective action. USRC may, in addition, pursue Consultant for all other losses, damages and expenses attributable to Consultant’s breach, including, but not limited to, overhead and profit. USRC may, in its sole discretion, set off any costs of corrective action or losses due to the breach against any sums owed by USRC to Consultant.

## Termination by USRC for Cause. Upon the occurrence of an Event of Default, USRC shall have the right to terminate the Contract for cause upon three (3) business days’ notice. USRC’s right to terminate pursuant to this § 6.3 shall be in addition to its rights under § 6.2 above. If USRC terminates this Contract for cause, Consultant shall be entitled to recover any amounts due through the date of termination, less USRC’s costs of corrective action and other losses, damages and expenses attributable to Consultant’s breach as described in § 6.2 hereof. Consultant shall not be entitled to any other compensation in the event USRC terminates this Contract for cause.

## Termination by USRC for Convenience. USRC may, at any time and for any reason, upon ten calendar (10) days’ written notice, terminate this Contract, in whole or in part, at USRC’s convenience. For the avoidance of doubt, USRC may terminate the Contract during a Cure Period or extension thereof. If USRC terminates this Contract for its convenience, Consultant shall be entitled to recover any amounts due through the date of termination, plus its reasonable costs of termination; provided, however, that no amounts shall be due for work performed by Consultant unless such work has been accepted by USRC. If USRC terminates this Contract for its convenience, Consultant shall not be entitled to any other compensation or consequential damages, including, without limitation, lost profits, lost opportunity costs, home office overhead, unabsorbed corporate overhead, impact damages or other similar remuneration. After receipt of USRC’s notice of termination, Consultant shall stop work under the Contract as specified in the notice; terminate all orders and subcontracts to the extent they relate to performance of the terminated Contract Work and transfer title and deliver to USRC all completed work or other materials produced as part of the Contract Work.

## Termination by Consultant. Consultant shall give prompt written notice to USRC of either (a) a failure by USRC to pay the undisputed amount of an approved invoice by USRC within forty-five (45) calendar days of receipt; or (b) a substantial breach by USRC of a material obligation of USRC under this Contract. After receipt of such notice, USRC shall have fifteen (15) calendar days to remedy that breach (“*USRC Cure Period*”). Consultant, in its sole discretion, may extend the USRC Cure Period. Consultant shall have the right to terminate its obligations pursuant to this Contract on three (3) business days’ notice if the conditions identified in (a) or (b) of this § 6.5 have not been resolved by the expiration of the USRC Cure Period or any extension thereof. If Consultant terminates this Contract, Consultant shall be entitled to recover any amounts due through the date of termination plus the reasonable cost of recovering such amounts from USRC, if any. Consultant shall not be entitled to any other compensation in the event Consultant terminates this Contract for cause.

## Survival of Rights and Duties Following Termination. Termination of this Contract shall discharge only those obligations that are executory by either Party on or after the effective date of termination. Any right or duty of a Party based on either performance or a breach of this Contract before the effective date of termination shall survive the termination.

# INSURANCE REQUIREMENTS

## Types of Insurance. Consultant shall maintain, at its sole cost and expense, the Required Insurance Coverages set forth in Exhibit A attached to and made a part hereof. For the avoidance of doubt, Consultant’s failure to comply with any of the requirements of Exhibit A shall constitute a material breach of this Contract.

# RELEASE AND INDEMNIFICATION OF USRC and other indemnified parties

## Release. Consultant hereby releases USRC from all claims for damage to Consultant’s property, including property of any nature whatsoever of Consultant, its employees or subcontractors.

## Indemnification. Consultant shall indemnify and hold harmless USRC, the United States of America, acting through the Federal Railroad Administration, DDOT, Union Station Investco, LLC (“USI”) (lessee of USRC), Jones Lang LaSalle Americas, Inc. (“JLL”) (USI’s agent) and John Bowie Associates (“JBA”) (USRC’s consulting historical architect), and their officers, directors, employees and agents (collectively, the “Indemnified Parties”)from and against any and all claims, losses, demands, damages and liabilities of any kind, including without limitation, those for bodily injury, sickness or death, and property damage or destruction (and including without limitation reasonable attorneys’ fees and other costs and expenses related thereto), resulting from, arising out of, caused by or in connection with Consultant’s negligence, willful misconduct or strict liability; a violation by Consultant of Applicable Law or any License or Permit during the performance of the Contract Work; a breach by Consultant of any covenant or provision of this Contract or of any representations or warranties made by Consultant in this Contract; or an Event of Default.

## Additional Indemnification. In addition to any other indemnification obligation under this Contract, including the Exhibits thereto, Consultant agrees to indemnify and hold harmless the Indemnified Parties from and against any damages, including reasonable attorneys’ fees’ and costs and expenses related thereto, caused by Consultant’s patent or copyright infringement, or other intellectual property violation, or any loss related thereto, to the extent caused by the negligent acts of Consultant in performing the Contract Work.

# Confidentiality and Ownership of Documents

## Confidentiality of Documents. All Documents prepared by or provided to Consultant pursuant to this Contract are to be treated as confidential (“*Confidential Information*”). Confidential Information is not to be disclosed to third parties without USRC’s prior written approval and is to be delivered to USRC on request and in all events upon completion of the Contract Work or earlier termination of this Contract pursuant to Article 6. Consultant shall advise its employees, agents and subcontractors having access to Confidential Information of this obligation of confidentiality and bind such employees, agents and subcontractors to this same obligation. No articles, papers or treatises related to or in any way associated with the Contract Work performed pursuant to this Contract shall be submitted for publication without USRC’s prior written consent.

## Ownership of Documents. All Documents prepared by Consultant pursuant to this Contract are the property of USRC upon payment in full for services rendered in preparing such Documents.

# Dispute Resolution

## Negotiation; Filing of Claims. The Parties will attempt in good faith to resolve any dispute, Claim or controversy arising out of or relating to this Contract or the breach, termination, enforcement, interpretation or validity hereof, including this dispute resolution provision (a “*Dispute*”) promptly by negotiation. Consultant must initiate a Claim or other Dispute by giving notice to USRC within twenty (20) calendar days after the occurrence of the event giving rise to the Claim or other Dispute or within twenty (20) calendar days after Consultant becomes aware of the circumstances giving rise to the Claim or other Dispute, whichever is later; provided, however, that acceptance of final payment by the Consultant shall be deemed a waiver of any further Claims or Disputes, except for those which have previously be made in writing and are pending resolution.

## Mediation.

### If the Dispute is not resolved by negotiation, the Parties shall attempt in good faith to resolve any Dispute promptly by confidential mediation under the then-current Center for Public Resources Mediation Procedure before resorting to arbitration or litigation. Each Party will bear its own fees and expenses for participating in the mediation (including fees and expenses of its legal counsel). The Parties will share equally in the mediator’s fees and expenses.

### All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or judicial proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

### The pendency of a mediation shall not preclude a Party from seeking provisional remedies from a court of appropriate jurisdiction, and the Parties agree not to defend against any application for provisional relief on the ground that the mediation is pending.

### Mediation sessions shall be conducted within the District of Columbia unless USRC consents to a different location.

### If the Dispute is not resolved within thirty (30) calendar days of the initiation of the mediation procedure or if the other Party refuses to participate in a mediation, a Party may initiate arbitration or judicial proceedings as provided in §§ 10.3 or 10.4 below.

## Arbitration of Disputes involving $200,000.00 or less (excluding legal fees). If the Dispute involves a Claim for a sum of money of Two Hundred Thousand Dollars ($200,000.00) or less (excluding legal fees related to the Dispute), the Dispute shall be submitted to arbitration pursuant to this § 10.3:

### The arbitration proceeding, including the selection of an arbitrator, shall be conducted pursuant to the Center for Public Resources Rules for Administered Arbitrations then in effect. The Arbitration Tribunal shall consist of a sole arbitrator; provided that (i) each Party shall be entitled to limited discovery as prescribed by the arbitrator and (ii) the arbitrator may make interim awards and may award equitable and declaratory relief.

### The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq*., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Unless USRC consents to a different location, the place of the arbitration shall be within the District of Columbia.

### The costs and expenses of the arbitration and their apportionment between the Parties shall be determined by the arbitrator in his or her award or decision. Each Party shall bear its own fees and expenses for participating in the arbitration (including the fees and expenses of its legal counsel).

## Litigation of All Other Disputes. Any Dispute other than a Dispute described in Section 10.3 shall be subject to judicial resolution unless the Parties agree to refer the Dispute to arbitration in accordance with § 10.3.

### The federal and state courts of the District of Columbia shall have exclusive jurisdiction over disputes litigated pursuant to this §10.4.

### Each Party, by execution and delivery hereof, irrevocably waives, to the fullest extent permitted by Applicable Law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Contract. Each Party certifies that it has been induced to enter into this Contract by, among other things, the mutual waivers and certifications set forth in this Subsection 10.4(b).

# ARTICLE 11Miscellaneous

## Parties Bound. All the terms of this Contract shall apply to and be binding upon, and inure to the benefit of, the successors and assigns of USRC and Consultant, except that this Contract may not be assigned by Consultant without first obtaining the written consent of USRC.

## Retention of Records. Consultant’s records relating to this Contract and the performance of the Contract Work shall be kept in accordance with generally accepted accounting principles, shall be retained by Consultant for a period of no less than five (5) years after the end of the Contract Term and shall be available to USRC, DDOT or the authorized representatives of USRC or DDOT for audit and review during normal business hours during such period.

## Waiver and Modification. A waiver on the part of USRC or Consultant of the breach of any term, provision or condition of this Contract shall not constitute a precedent or bind either Party to a waiver of any other breach of the same or any other term, provision or condition of this Contract. Except as provided in Article 4, this Contract may only be modified by written agreement signed by both Parties.

## Governing Law and Forum. This Contract is made pursuant to and shall be governed by the laws of the District of Columbia exclusive of any principles or rules of law that would require or permit the application of any law of another jurisdiction.

## Exculpatory Clause. No individual, director (or his/her designee), officer, representative or employee of USRC shall have any liability for the obligations of USRC hereunder. No individual, director, officer, shareholder, representative or employee of Consultant shall have any liability for the obligations of Consultant hereunder.

## Construction and Interpretation. This Contract and any modifications or amendments hereto may be executed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one instrument. As used herein, except as the context otherwise indicates, the singular shall include the plural and vice versa and words of any gender shall include any other gender. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. All references to Sections (“§”), Subsections or Exhibits shall be to Sections (“§”), Subsections or Exhibits of this Contract unless otherwise specified. The captions are inserted for convenience of reference, and are not intended to define, limit or describe the scope or intent of this Contract.

## 11.7 Notices. Any notice that either Party is required to give or chooses to give pursuant to this Contract shall be in writing and sent by prepaid overnight delivery service for next business day delivery to the individuals at the addresses listed below. Notice shall be deemed given when delivered by the overnight delivery service. Each Party shall also send electronic copies of such notices to the individuals at the email addresses listed below.

Nzinga Bryant

Vice President and Director,

Finance and Administration

Union Station Redevelopment Corporation

750 First Street NE, Suite 1010

Washington, D.C. 20002

(202) 222-0271

nbryant@usrcdc.com

with a copy (which shall not constitute notice to)

Marialuisa S. Gallozzi

Covington & Burling LLP

One CityCenter,

850 Tenth Street NW

Washington, D.C. 20001-4956

(202) 662-5344

mgallozzi@cov.com

[Name]

 [Consultant]

 [Address]

 [Phone]

 [email]

 with a copy (which shall not constitute notice to)

Consultant Counsel

[address]

[phone]

[e-mail]

## Severability. Every provision, term, paragraph or part of this Contract is severable from the others. If any provision, term, paragraph or part of this Contract is construed or held to be void, invalid or unenforceable by order, decree or judgment of a court of competent jurisdiction, the remaining provisions, terms, paragraphs and parts shall not be affected thereby but shall remain in full force and effect.

## Entire Agreement; Order of Precedence. This Contract (including the Cover Page, the Request for Proposals, Consultant’s Proposal, the Scope of Work and all Exhibits) constitutes the entire understanding and agreement of the Parties with respect to the Contract and the Contract Work. Exhibit A attached to this Contract is an integral part hereof, in the same manner as if set forth in the body of the Contract. This Contract supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the services to be provided under this Contract. ***In the event of any conflict between the Consultant’s Proposal and the terms of this Contract, the RFP, the Scope of Work or Exhibit A, the terms of this Contract, the RFP, the Scope of Work and Exhibit A shall control***.

## Survival of Obligations. Without limiting any right or obligation of a Party which may survive the expiration or prior termination of this Contract pursuant to the terms hereof, all obligations on the part of either Party to indemnify, and/or hold harmless the other Party shall survive the expiration or prior termination of this Contract.

## Relationship of the Parties. This Contract does not create any relationship, whether of principal and agent, partnership, joint venture or any association between USRC and Consultant other than a contractual relationship.

## Corporate Action. USRC and Consultant hereby represent and warrant to each other that all necessary corporate action has been taken to enter into this Contract and that the person signing this Contract on behalf of USRC and Consultant respectively, is duly authorized to do so.

## “Buy America Act”; Davis-Bacon Act; Other Federal Requirements. Consultant agrees to comply with the requirements of the “Buy America Act” (23 U.S.C §313) and regulations promulgated thereunder (23 CFR 635.410). Consultant must also comply with the requirements of the Davis-Bacon Act (40 U.S.C.A. §§ 276a to 276 a-5) and the regulations promulgated thereunder. The Davis-Bacon Act is the federal law that governs the minimum wage rates to be paid to laborers and mechanics on federal-aid projects. The Consultant shall submit to USRC weekly for each week in which Contract Work is performed a copy of all payrolls. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph 5.5 (a) (3) (i) of the regulations, 29 CFR Part 5. In addition, Consultant shall comply with all required Federal clauses relating to Davis-Bacon Act compliance and other Federal requirements, the complete text of which is set forth in Exhibit G, attached hereto and made a part hereof. The applicable Wage Determination issued by the Wage and Hour Division of the United States Department of Labor is also set forth in Exhibit G, attached hereto and made a part hereof.

##  Non-Discrimination. USRC and Consultant shall both abide by the provisions of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C.§§ 2000d *et. seq.*); Title V, Section 504 of the Rehabilitation Act of 1973, as amended (87 Stat. 394; 29 U.S.C.§ 794); the Age Discrimination Act of 1975, as amended (89 Stat. 728; 42 U.S.C. §§ 6101 *et seq.*); and the D.C. Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38, D.C. Official Code §§ 1401.01 *et seq*.). USRC and Consultant shall both abide by all other Federal, District of Columbia and local laws and regulations prohibiting discrimination on the grounds of race, color, national origin, disability, religion, sex or sexual orientation, in employment and in providing facilities and/or services to the public as applicable. The Consultant shall comply with all federally required non-discrimination provisions, the complete text of which is set forth in Exhibit G attached hereto and made a part hereof. In advertising for employment, nothing shall be done which may prevent persons covered by these laws from qualifying for employment. The Consultant agrees to post in conspicuous spaces available to employees and applicants for employment a notice setting forth the provisions of this non-discrimination clause.

##  Local and Minority Subcontracting Plan. Consultant shall comply with the Local and Minority Subcontracting Plan submitted with the Consultant’s Proposal.

##  Audit Requirements. Consultant will conduct, and agrees to require its subcontractors to conduct, a single audit that meets the standards of 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (Uniform Guidance), if the Consultant, or any of its subcontractors, expend an aggregate of seven hundred fifty thousand dollars ($750,000.00) or more in Federal grants in a calendar year.

## **[Signatures follow on next page]**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract the day and year first above written.

|  |  |
| --- | --- |
| ATTEST: | UNION STATION REDEVELOPMENT CORPORATION |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Beverley K. Swaim-Staley President & CEO |  |

|  |  |
| --- | --- |
| APPROVED AS TO FORM: |  |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Marialuisa S. Gallozzi Covington & Burling LLPDate: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

|  |  |
| --- | --- |
| ATTEST: | [CONSULTANT] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

**[This page being the signature page of the Contract dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019 by and between Union Station Redevelopment Corporation and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.]**

EXHIBIT A

insurance obligations of Consultant

1. Required Insurance Coverages. For the protection and benefit of the USRC, the other Indemnified Parties identified in Section 8.2 of this Contract and the Consultant, the Consultant shall procure and maintain insurance coverage of the types and in the amounts required by law or specified in paragraphs 1.a. through 1.e. below, whichever coverage is greater in amount or scope. Such coverage is referred to herein as the “Required Insurance Coverages.” Consultant shall maintain the Required Insurance Coverages in full force and effect at all times during the Contract Term or for such longer period as specified herein.
	1. *Worker’s Compensation Insurance*. Coverage for all employees employed in connection with the Contract Work and with the Consultant’s other operations pertaining to this Contract. Consultant agrees to comply at all times with the provisions of the Workers’ Compensation laws of the District.
	2. *Employer’s Liability Insurance*. Coverage of at least One Million Dollars ($1,000,000) per accident or disease.
	3. *Commercial General Liability Insurance*. Coverage of at least Two Million Dollars ($2,000,000) per occurrence for a period of not less than two (2) years following the date of final payment for [*or completion of, if later*] the Contract Work. The Commercial General Liability Insurance Policy shall include, without limitation, appropriate endorsements adding the following coverages:
* Premises and Operations Liability;
* Explosion, Collapse and Underground Damage Liability;
* Personal Injury Liability (with employee and contractual exclusions deleted);
* Broad Form Property Damage Liability;
* Independent Consultant’s Protective Liability; and
* Completed Operations and Products Liability.

Any aggregate limit under the Consultant’s Commercial General Liability Insurance shall, by endorsement, apply separately to the Contract Work.

* 1. *Comprehensive Automobile Liability Insurance*. Coverage for bodily injury and/or property damage of at least Two Million Dollars ($2,000,000) per person and Two Million Dollars ($2,000,000) per occurrence. The Comprehensive Automobile Liability Insurance shall cover the operation of all vehicles used in connection with performing the Contract Work and shall be applicable to owned, hired and non-owned vehicles.
	2. *All Risk Property Insurance*. A policy covering physical loss or damage to all of Consultant’s property used in the performance of the Contract Work. The policy shall have limits of liability adequate to cover property of Consultant (including property of others in Consultant’s care, custody or control) and include a waiver of subrogation against USRC.
1. Additional Insured Endorsements.
	1. *USRC and other Additional Insureds.* The Consultant shall cause the Required Insurance Coverages (other than the Workers’ Compensation Insurance and Professional Liability Insurance) to include USRC, the United States of America, acting through the Federal Railroad Administration, DDOT, Union Station Investco, LLC, Jones Lang LaSalle Americas, Inc., and JBA as additional insureds for claims or losses caused in whole or in part by the Consultant’s negligent or intentional acts, errors or omissions during the Consultant’s operations and completed operations.
	2. *Consultant’s Insurance is Primary*. The Required Insurance Coverages shall be primary to and noncontributory with respect to any valid insurance issued or affording coverage to USRC or the other Indemnified Parties listed above. If USRC or the other Indemnified Parties have insurance that applies to the claim or loss, such other insurance shall apply on an excess or contingent basis. The liability of the Consultant’s insurer(s) under any of the Required Insurance Coverages shall not be reduced by the existence of any insurance issued or maintained by USRC or the other Indemnified Parties.
	3. *Waiver of Subrogation*. The Required Insurance shall include a waiver of subrogation against USRC, the United States of America, acting through the Federal Railroad Administration, DDOT, Union Station Investco, LLC, Jones Lang LaSalle Americas, Inc., and JBA.
2. Insurance Company Ratings. Consultant shall procure the Required Insurance Coverages from insurance companies (a) authorized to do business in the District of Columbia and rated A minus VII or better by the then-current edition of Best’s Key Rating Guide or (b) otherwise approved by the USRC.
3. Evidence of Required Insurance Coverages.
	1. *Policies or Certificates to be Provided*. The Consultant hereby agrees to deliver to the USRC, within five (5) business days of execution of this Contract and before commencing the Contract Work, Certificates of Insurance in form and substance satisfactory to the USRC, together with copies of the policy language and /or endorsements naming USRC, the United States of America, acting through the Federal Railroad Administration, DDOT, Union Station Investco, LLC, Jones Lang LaSalle Americas, Inc., and JBA as additional insureds, evidencing the Required Insurance Coverages in lieu of certified copies of all insurance policies comprising the Required Insurance Coverages.
	2. *Continuity following Expiration or Renewals*. When any Required Insurance Coverage shall expire or be renewed in the ordinary course, Consultant shall supply the USRC with Certificates of Insurance and amendatory riders or endorsements that confirm the continuation of all Required Insurance Coverages without any gap or lapse in coverage.
	3. *No Waiver by USRC*. In no event shall any failure of the USRC to receive certified copies of policies or Certificates of Insurance required under this Contract or to demand receipt of such certified copies or Certificates of Insurance prior to the Consultant’s commencing the Contract Work be construed as a waiver by the USRC of the Consultant’s obligations to procure and maintain the Required Insurance Coverages. In no event shall the receipt and review by the USRC of any copies of insurance policies or Certificates of Insurance relieve the Consultant of any of the Required Insurance obligations of Consultant described in this Exhibit A.
	4. *Procurement is a Separate Obligation.* The obligation to procure and maintain any insurance required by this Contract is a separate responsibility of the Consultant and independent of the duty to furnish a certified copy of, or Certificate of Insurance for, such insurance policies.
4. Subcontractors and Sub-subcontractors.

The Consultant agrees to require or contractually obligate its Subcontractors and Sub-subcontractors to:

* 1. Comply with the insurance provisions required of the Consultant pursuant to this Exhibit A (including the requirement to name USRC and the other Indemnified Parties listed above as additional insureds) unless USRC, in its sole discretion, agrees to any request from the Consultant and/or a subcontractor or sub-subcontractor to modify these requirements for a subcontractor or sub-subcontractor whose Contract Work is of relatively small scope.
	2. Advise the Consultant promptly of any material changes or lapses of the Required Insurance Coverages. Consultant agrees to promptly advise the USRC of any such notices Consultant receives from its Subcontractors and Sub-subcontractors.
1. Lapse, Nonrenewal or Expiration of Insurance Coverage.
	1. *No Material Changes*. The Consultant shall not make material changes in or allow the Required Insurance Coverages to lapse without the USRC’s prior written approval of any such material change or lapse.
	2. *Notice of Changes to USRC.* All insurance policies comprising the Required Insurance Coverage must be endorsed to contain a provision giving the USRC thirty (30) days’ prior written notice by certified mail of any material alteration, cancellation, nonrenewal or expiration of such policies. If an insurer does not agree to provide notice directly to USRC, Consultant shall provide notice of any material alternation, cancellation, nonrenewal or expiration of any such policies as soon as practicable pursuant to the Notice provisions and in the manner specified in Section 11.7.
	3. *Copies of Renewal/Replacement Policies to be Provided.* If any renewal or replacement policy, for whatever reason obtained or required, either is (a) written by an insurer other than the insurer with which the coverage was previously placed, or (b) differs in any way from the policy it replaces, the Consultant shall also furnish the USRC with a Certificate of Insurance and additional insured endorsements for any such policies. All such Certificates and endorsements shall be in form and substance satisfactory to the USRC and written by insurers acceptable to the USRC.
2. Payments made by the USRC. If either (a) a notice of cancellation is issued for non-payment of premiums or any part thereof, or (b) Consultant fails to provide a Certificate of Insurance as required by Paragraph 4(a) of this Exhibit A, USRC shall have the right, but not the obligation, to pay the unpaid premium to the insurance company or to obtain the Required Insurance Coverage and to deduct such premium payment from any sum that may be due or become due to the Consultant, or to seek reimbursement for said payments from the Consultant. Any sums paid by the USRC shall be due and payable immediately by the Consultant upon notice from the USRC.
3. Reservation of Rights. USRC, in its sole discretion, reserves the right to require additional insurance coverages or to change the limits of insurance required under this Contract as it deems necessary based on the nature and scope of the services to be provided by the Consultant under this Contract.
4. Insurance Does Not Limit Consultant Liability*.* The insurance provisions of this Contract are not intended as and shall not be construed to limit the Consultant’s responsibilities and liabilities pursuant to the Contract.

**EXHIBIT B**

**Request for Proposals**

**EXHIBIT C**

**Consultant’s Proposal**

**EXHIBIT D**

**Scope of Work (“Contract Work”)**

**EXHIBIT E**

**Contract Amount**

 EXHIBIT F

Contract Schedule

**EXHIBIT G**

**Davis-Bacon Act and other Required Federal Clauses and Applicable Wage Determination**

**A. The following Davis-Bacon Act and other required Federal clauses are made a part of this Contract. References to “Grant Recipient”, “Applicant” or “Owner” shall be deemed to be references to USRC**.

REQUIRED CONTRACT PROVISIONS

FEDERAL-AID CONSTRUCTION CONTRACTS

I. General

II. Nondiscrimination

III. Nonsegregated Facilities

IV. Davis-Bacon and Related Act Provisions

V. Contract Work Hours and Safety Standards Act Provisions

VI. Subletting or Assigning the Contract

VII. Safety: Accident Prevention

VIII. False Statements Concerning Highway Projects

IX. Implementation of Clean Air Act and Federal Water Pollution Control Act

X. Compliance with Governmentwide Suspension and Debarment Requirements

XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

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

#  I. GENERAL

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

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

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

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

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

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

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

#  II. NONDISCRIMINATION

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

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

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

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

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

**1. Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Consultant's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the Consultant agrees to comply with the following minimum specific requirement activities of EEO:

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

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

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

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

**3. Dissemination of Policy:** All members of the Consultant'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 Consultant'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 Consultant'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 Consultant's EEO obligations within thirty days following their reporting for duty with the Consultant.

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

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

e. The Consultant'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 Consultant will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

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

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

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

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

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

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

c. The Consultant will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Consultant 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 Consultant will promptly investigate all complaints of alleged discrimination made to the Consultant in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Consultant will inform every complainant of all of their avenues of appeal.

**6. Training and Promotion:**

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

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

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

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

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

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

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

c. The Consultant 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 Consultant, the Consultant shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#  III. NONSEGREGATED FACILITIES

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

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

#  IV. Davis-Bacon and Related Act Provisions

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

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

**1. Minimum wages**

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

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

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

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

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

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

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

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

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

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

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

**2. Withholding**

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

**3. Payrolls and basic records**

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

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

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

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

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

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

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

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

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

**4. Apprentices and trainees**

a. Apprentices (programs of the USDOL).

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

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

**10. Certification of eligibility.**

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

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

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

#  V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

#  VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

# VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

 **VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 1**. Instructions for Certification – First Tier Participants:**

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

 2. **Instructions for Certification - Lower Tier Participants:**

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

 **B. Applicable Wage Determination**

**The applicable Wage Determination issue by the Wage and Hour Division of the United States Department of Labor is as follows**:

 DC 190002 04/05/2019  **DC2**

**EXHIBIT H**

USRC EXPENSE REIMBURSEMENT POLICY

This Expense Reimbursement Policy (“Policy”) applies to all USRC Consultants. This Policy covers ordinary expenses incurred by a Consultant in performing the work of the Contract, as well as those incurred in connection with travel on USRC business. Reimbursement in all cases will be for reasonable expenses as determined by USRC in its sole discretion.

Consultants are responsible for complying with all aspects of this Policy which is intended to provide Consultants with a clear statement of those expenses which USRC has determined are reimbursable.USRC assumes no obligation to reimburse Consultant for expenses that do not comply with this Policy. If a Consultant has any questions concerning whether or to what extent an expense will be reimbursable, Consultant should consult with USRC prior to incurring the expense.

**Ordinary Expenses**

1. USRC will reimburse Consultant for reasonable expenses incurred in performing the Contract Work.
2. Reimbursable expenses include printing and copying costs; parking, tolls and taxi/ridesharing fees incurred in connection with attendance at meetings; and the cost of overnight mail or courier service, but only if electronic transmission is not feasible. Meals are not reimbursable except when incurred in connection with business travel as set forth below. The only exception would be meals provided in connection with working meetings related to the Contract Work.
3. Any other expenses will be reimbursed only if approval is received from USRC in advance.
4. As set forth in Consultant’s Contract with USRC, no markup will be allowed on any expenses incurred.

**Expenses incurred in Travel Status**

1. Consultants will be reimbursed for all reasonable and necessary expenses incurred while traveling on authorized USRC business.
2. The use of on-line services for booking of air travel is recommended.
3. Air travel should only be considered when it is most cost effective.
4. Consultants are required to book and confirm all travel at the lowest logical fare routing.
5. Domestic Travel (defined as travel within North America or within South America) - Consultants must select Coach Class cabin for the entire trip.
6. USRC will not reimburse Consultants for upgrades purchased to upgrade class of service or upgraded seating on any flight. Individuals choosing to upgrade at their own expense may only expense airfare for the original class of service.
7. Rental cars may be used when they are less expensive than alternative means of transportation and where their convenience or safety justifies the additional cost.
8. For all rail travel, Consultants should purchase a coach class ticket. The only exception would be if the purchase of a first-class ticket (e.g., Amtrak Acela) allows for a one-day trip without the expense of an overnight stay.
9. USRC will reimburse properly documented hotel expenses up to the maximum allowable amount as established by federal government guidelines set forth by the General Services Administration. Maximum reimbursement rates can be found at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. Reimbursement requests must include sufficient backup to document that maximum allowable rates were not exceeded.
10. Many hotels provide complimentary or low-cost airport shuttle service. Consultants should use this service, if it is available.
11. If hotel shuttle service is not available, Consultants are encouraged to use public transportation, as it is the next most economical means of travel and most environmentally friendly. If public transportation is not available, Consultant may use a reasonably priced taxi/ride sharing or shuttle service.
12. USRC will reimburse Consultants for mileage ($.54 per mile), tolls, parking lot and taxi/ride sharing fees paid while on USRC business (e.g., visiting a location with the client).
13. Meal limits for travel in all cities are as follows: (International meal limits are listed in bold.)

|  |  |  |
| --- | --- | --- |
| **Breakfast**  | **Dinner**  | **Daily Maximum**  |
| $12.00/***$20.00 Int’l***  | $35.00/***$61.00 Int’l***  | $47.00/***$81.00 Int’l***  |

1. A Consultant is entitled to reimbursement for both breakfast and dinner on the same day while traveling and may spend up to the maximum daily allowance. There is no reimbursement for lunch.
2. Tipping is reimbursable when it is incidental to any of the above travel related expenses. Reasonable guidelines for tipping are:

|  |  |
| --- | --- |
| Airport Porter | $2.00 per bag (average) |
| Limo / Taxi Driver | 15% - 20% of fare |
| Meals | 15% - 20% of bill |

1. The following incidental expenses, when directly related to business travel, are reimbursable provided they are identified separately, and are supported by original receipts:
* Airport taxes/fees
* Currency conversion costs (only when traveling internationally)
* Baggage charges
* Refueling of gasoline for rental vehicles at gas stations
* Laundry, dry-cleaning and valet services for trips 3 consecutive nights or longer
* Visa and passport fees (for international travel)

As required by IRS rules and regulations, USRC is required to maintain documentation for various charges. USRC may request receipts for any and all expenses at its discretion. Receipt requirements include, but are not limited to, the following:

* Detailed hotel/lodging bill
* Internet bill – if a wi-fi receipt is not available, transaction detail from the credit card used to pay the bill must be submitted
* Other communications expenses with adequate documentation
* If using a personal check to support an expense for which there was no other receipt, both the front and back of the check must be provided
* A receipt should be available for anything expensed under the expense type of “Other”