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REQUEST FOR PROPOSAL 7397 TRAFFIC SIGNAL CONTROL SYSTEM

The City of Fort Collins is requesting proposals from qualified firms to procure new traffic signal control system software and controller firmware that will replace its current Siemens I2 Advanced Traffic Management System software and corresponding Nextphase firmware that operates in Model 2070 traffic signal controllers in the field.

Proposals may be submitted by E-mail in Microsoft Word or PDF format. E-mail submittal shall be e-mailed to: purchasing@fcgov.com. Written proposals, six (6) copies, will be received at the City of Fort Collins' Purchasing Division, 215 North Mason St., 2nd floor, Fort Collins, Colorado 80524. **Proposals will be received before 3:00 p.m. (our clock), June 15, 2012 and referenced as Proposal No. 7397.** If delivered, they are to be sent to 215 North Mason Street, 2nd Floor, Fort Collins, Colorado 80524. If mailed, the address is P.O. Box 580, Fort Collins, 80522-0580.

This project is made possible through a mixture of local funds from The City of Fort Collins and federal Congestion Mitigation and Air Quality (CMAQ) funds. Federal reporting for the procurement of equipment in this project is anticipated to be stringent. The City is not requiring DBE or Buy America on this project.

Questions concerning the scope of the project should be directed to Project Manager, Ward Stanford, Traffic Systems Engineer at (970) 221-6820 or wstanford@fcgov.com.

Questions regarding bid submittal or process should be directed to Ed Bonnette, C.P.M., CPPB, Buyer, at (970) 416-2247 or ebonnette@fcgov.com.

A copy of the Proposal may be obtained as follows:

1. Download the Proposal/Bid from the BuySpeed Webpage, www.fcgov.com/eprocurement

The City of Fort Collins is subject to public information laws, which permit access to most records and documents. Proprietary information in your response must be clearly identified and will be protected to the extent legally permissible. Proposals may not be marked 'Proprietary' in their entirety. Information considered proprietary is limited to material treated as confidential in the normal conduct of business, trade secrets, discount information, and individual product or service pricing. Summary price information may not be designated as proprietary as such information may be carried forward into other public documents. All provisions of any contract resulting from this request for proposal will be public information.

Sales Prohibited/Conflict of Interest: No officer, employee, or member of City Council, shall have a financial interest in the sale to the City of any real or personal property, equipment, material, supplies or services where such officer or employee exercises directly or indirectly any decision-making authority concerning such sale or any supervisory authority over the services to be rendered. This rule also applies to subcontracts with the City. Soliciting or accepting any gift, gratuity favor, entertainment, kickback or any items of monetary value from any person who has or is seeking to do business with the City of Fort Collins is prohibited.

Collusive or sham proposals: Any proposal deemed to be collusive or a sham proposal will be rejected and reported to authorities as such. Your authorized signature of this proposal assures that such proposal is genuine and is not a collusive or sham proposal.

The City of Fort Collins reserves the right to reject any and all proposals and to waive any irregularities or informalities.

Sincerely,

James B. O'Neill II, CPPO, FNIGP
Director of Purchasing & Risk Management

7397 TRAFFIC SIGNAL CONTROL SYSTEM SCOPE OF SERVICES

1. Proposal Requirements

1.1 Purpose

The intent of this Request for Proposal (RFP) is to serve as a formal solicitation process for the City of Fort Collins to procure new traffic signal control system software and controller firmware that will replace its current Siemens I2 Advanced Traffic Management System software and corresponding Nextphase firmware that operates in Model 2070 traffic signal controllers in the field. The City is interested in receiving submittals from parties that have a Commercial Off-The-Shelf (COTS) traffic signal control system software/firmware product that meets the current City requirements contained herein.

1.2 Proposal Submittal

The City of Fort Collins shall not reimburse any vendor for costs incurred in the preparation and presentation of their proposal.

Vendors submitting proposals shall submit six (6) copies of their proposal.

Qualified vendors interested in providing the traffic signal control system described in this request for proposals should include the following information in their Proposal.

1.3 Contacts

Questions related to procedures should be directed to:

Ed Bonnette
City of Fort Collins Purchasing
215 N. Mason Street
P.O. Box 580
Fort Collins, CO 80522
Phone 970-416-2247
E-mail ebonnette@fcgov.com

Questions related to the scope of work should be directed to:

Ward Stanford – Project Manager
City of Fort Collins Traffic Operations Department
626 Linden Street
P.O. Box 580
Fort Collins, CO 80522
Phone 970-221-6820
E-mail wstanford@fcgov.com

The Project Management Team will also include other staff from the City's Traffic Operations Department.

1.4 Pre-Proposal Questions

The City is requiring that vendors submit any questions they have by email to the City by end-of-business Friday June 1, 2012. The City will respond to questions submitted before the deadline by issuing a Question & Answer Addendum to the RFP. Oral interviews/presentations for those selected to participate are expected to be held on the week of June 29th with work beginning on or around July 20, 2012 after contract is signed.

2. Project Funding

This project is made possible through a mixture of local funds from The City of Fort Collins and federal Congestion Mitigation and Air Quality (CMAQ) funds. Federal reporting for the procurement of equipment in this project is anticipated to be stringent. Cooperation from the successful Vendor will be required to provide timely and appropriate invoicing and documentation of the project. The City is not requiring DBE or Buy America on this project.

3. Project Schedule

Once notice to proceed is issued the City of Fort Collins anticipates that the new traffic signal control system will become operational in phases with all traffic signal controllers successfully transferred to the new traffic signal control system by the end of 2012. When all traffic signal controllers have been successfully transferred to the new traffic signal control system, the existing I2 traffic signal control system will be retired. A detailed discussion of the Vendors role in project implementation is shown in section 6.

4. Existing Conditions

The following offers a summary of the various aspects of The City of Fort Collins' existing infrastructure and capabilities. The Vendor shall thoroughly review this section to ensure that its proposed equipment is compatible with existing hardware and software. Upgrades or replacements required to make the existing system compatible with the proposed solution shall be listed, along with associated costs.

Note: The quantities and devices documented in this Section are the best information available at the time of print, but they are subject to change. Vendors will be notified of major changes to the existing conditions during the submittal process.

4.1 Information Technology (IT)

The City of Fort Collins Traffic Operations Department installs and maintains devices to operate the Traffic Local Area Network (LAN) used to connect to field traffic control devices. The City of Fort Collins Information Technology (IT)

Department installs, operates, and maintains the enterprise LAN used by the majority of the City of Fort Collins employees. The City of Fort Collins Traffic and IT staffs work closely to ensure a safe and secure network connection between the Traffic and enterprise LANs that provides added functionality and accessibility to the Traffic LAN.

4.1.1 Network Architecture

The IT department maintains a single 1000Mb/s L3 routed (no NAT) access control list (ACL) connection between the enterprise LAN and Traffic LAN. It is severely limited for security reasons and as such has limited access. Only Internet access is allowed to be initiated from the Traffic LAN with the exception of printing to certain enterprise printers, time sync with enterprise NTP servers (NTP is NOT allowed to/from the internet), and access to DNS services. The Internet access provided to the Traffic LAN utilizes the City of Fort Collins Internet Connection and is subject to the same restrictions as all the City of Fort Collins devices including blocking of malicious/inappropriate sites/code, rate limiting of low priority traffic and full state firewall rules. Connections from the City of Fort Collins LAN(s) into the Traffic LAN are limited as well. Only trusted City devices are permitted access to the Traffic Network due to the nature of the system. Any changes to this policy will require the City of Fort Collins Network (security) team and appropriate management approvals before being implemented.

The Traffic Operations and IT departments cooperatively maintain the Traffic LAN. The Traffic LAN consists of a backbone with ring topology that connects five (5) communication cabinets via the backbone fiber. The communication cabinets house network switches that provide 1000 Mb/s connection around the ring and 100 Mb/s connections to lateral fiber runs connecting multiple traffic signal controllers, CCTV cameras, video detection cameras, radios and conflict monitors.

4.1.2 Geographical Information Systems (GIS)

The City of Fort Collins currently uses a versioned ESRI SDE 10 geodatabase running on Oracle 11g. The City of Fort Collins is in the process of moving to CityWorks Server, which was developed with ESRI's ArcGIS Server product 10 SP1. The date of conversion is unknown at the time of print. The majority of desktop users on the "trusted" side of the enterprise LAN are running ESRI ArcGIS software at the ArcView license level.

4.1.3 Traffic System Servers

The current Traffic Management System software utilizes two (2) HP ProLiant DL360 G6 servers running Microsoft Windows Server 2003. One serves as a communication server and the other as a file server.

Both servers are equipped with an Intel Xeon CPU, 2.27 GHz processor with 3.99 GB of RAM. There is also an HP ProLiant DL360 server running Microsoft Windows Server 2003 that is dedicated to domain control for the Traffic system.

4.1.4 Traffic System Workstations

There are four (4) Dell Optiplex 755 workstations on the Traffic network that are dedicated to the Traffic Management System. These workstations are running Microsoft Windows XP Professional and are equipped with an Intel Core 2 Duo CPU, 2.33GHz processor with 2 GB of RAM and have a 149 GB HDD.

4.1.5 Technician Laptops

In 2012, The City of Fort Collins will acquire three (3) new Panasonic Toughbook CF-52 rugged laptops for its traffic signal maintenance technicians. These laptops will be utilized in the field to interact with the new traffic signal control system software. These laptops use the Microsoft Windows XP Professional operating system and come with an Intel Core i5-2540 vPro processor, 4GB of RAM, and have a 320 GB HDD. The laptops have one (1) DB-9 serial port, one (1) 10/100/1000 Ethernet NIC and four (4) USB 2.0 interfaces.

4.1.6 Virtual Servers

The City of Fort Collins has begun implementing virtual servers and is open to installing the Traffic Control System software on virtual machines. If proposed as a virtual application, the Traffic Control System software would be required to be VM certified.

4.2 Traffic Signal Infrastructure

4.2.1 Signalized Intersections

There are 178 signalized intersections, 30 pedestrian signals, 2 pedestrian hybrid beacons, 5 emergency vehicle signals and 48 school zones currently operated and maintained by The City of Fort Collins.

4.2.2 Traffic Signal Control System

The City currently uses the I2 Advanced Traffic Control System software from Siemens to communicate with traffic signals in the field. I2 is a centralized system allowing for constant, simultaneous monitoring of all traffic signals communicating with the system. The central traffic signal control system hardware and software is housed at the City of Fort Collins Traffic Operations Center (TOC) which is located at 626 Linden Street in Fort Collins. The system consists of a central file server, communications server, and local field devices. The City of Fort Collins can also access the servers and workstations on Traffic's Local Area

Network (LAN) by means of a Remote Desktop connection via a Virtual Private Network through The City of Fort Collins Information Technology's LAN.

4.2.3 Communication Hardware

The City of Fort Collins primarily uses an Ethernet communication protocol using a combination of fiber optic cabling and wireless access points/bridges to communicate with each Ethernet based traffic signal controller that is connected to the system. IFS 7430 WDM switches and RuggedCom RS900 managed switches are used at locations with fiber optic cabling and Cisco 1310 wireless access points/bridges (2.4GHz spectrum) are used at locations without fiber.

Serial communication is still used at a number of locations. IFS 9130 serial transceivers are used at locations with serial based traffic signal controllers and fiber optic cabling. At locations with serial based traffic signal controllers and no fiber optic cabling, Intuicom Communicator II serial radios are used for communication.

The Traffic Operations network backbone is made up of six Moxa PT-7728 switches. There is one backbone Moxa switch at each of the four field communication cabinets and two backbone Moxa switches at the communication cabinet located in the TOC.

4.2.4 Controller Cabinets

The City of Fort Collins primarily uses type 170 cabinets at signalized intersections. NEMA cabinets are used at most pedestrian signals and a few signalized intersections.

- 10 Type 333 battery backup cabinets
- 105 Type 332 cabinets
- 63 Type 336 cabinets
- 37 NEMA cabinets.

4.2.5 Traffic Signal Controllers

The City of Fort Collins utilizes Model 2070 traffic signal controllers manufactured by Naztec at 178 locations. Currently, the City utilizes Siemens Nextphase Firmware in all of the 2070 controllers. Various versions of the firmware ranging from revision 1.5.5c to 1.6.1h are in use at most locations. Four locations are running revision 1.7.5 to take advantage of more advanced features for queue detection and pedestrian hybrid beacon programming. There are 166 locations with 2070 controllers linked to the TOC via the communication system.

An additional 11 locations are equipped with Econolite ASC/2 controllers that communicate to the TOC. Four of the locations are Ethernet based and the other seven are serial.

The remaining 26 locations utilize Multisonics 820 controllers and do not currently communicate with the TOC. The reduced speed school zones use Eltec NTC-17E clocks. None of the school clocks currently communicate with the TOC.

4.2.6 Traffic Signal Phasing

The City of Fort Collins has signalized intersections with 2 to 8 phases and some with additional overlap phases. The City uses a standardized phasing plan:

- Phase 1 – NB LT
- Phase 2 – SB
- Phase 3 – WB LT
- Phase 4 - EB
- Phase 5 – SB LT
- Phase 6 – NB
- Phase 7 – EB LT
- Phase 8 - WB

Left turn phasing used in The City of Fort Collins includes permissive-only, protected/permissive, split, and protected-only phasing. Nearly all protected/permissive phasing is configured with standard five-section vehicle heads; however flashing yellow arrows have been implemented at ten (10) locations with plans to install them at additional locations in the near future. The City utilizes phasing sequences intended to eliminate 'left turn trap' potential.

Right turn phasing exists at some locations in the City where dedicated right-turn lanes exist. Both hard-wired (i.e. "cheater" where the right turn indication is wired to the parent left turn phase) and overlap phases are used to accomplish the right turn arrow, with the latter being the preferred method.

Several intersections exist with non-standard phasing scenarios: adjacent intersections operated by a single controller (including frontage roads), separate railroad/trolley signals run as an overlap or separates phases, controller driven turn prohibition signs, extra pedestrian phases, advanced walk, flashing yellow arrows, advance warning flashers driven by phase yellow and red indications, and pedestrian hybrid beacons.

Several projects over the past few years have resulted in significant modifications to traffic signal phasing. Vendors' use of internet-based imagery is cautioned when formulating recommendations.

4.2.7 Intersection Detection

There are 59 traffic signals with video detection, 24 intersections with a hybrid of inductive loop and video detection, 82 intersections with inductive loops and 13 with no detection (fixed time operation). The City of Fort Collins currently uses the Econolite Terra video detection system as our standard (57 locations). Econolite Solo Pro detection is in place at 5 intersections and Traficon video detection is in place at 21 locations.

4.2.8 Conflict Monitors

The City of Fort Collins has adopted the EDI 2010ECLip conflict monitor as the standard monitor. US Traffic 2010ECL, and Reno 2018, conflict monitors are currently deployed in type 170 cabinets. IDC/Solid State Devices LCD-12P, EDI NSM-3 and Naztec Series 500.conflict monitors are currently deployed in NEMA cabinets.

4.2.9 Uninterruptible Power Supplies (UPS)

The City of Fort Collins has UPS installed at 10 traffic signal locations and plans to add UPS at 13 additional locations along the Mason Street corridor in the next two years. Currently all battery backups installed use the Clary SP1000-SN.

4.2.10 Emergency Vehicle Preemption (EVP)

The City of Fort Collins utilizes the Global Traffic Technologies (formerly 3M) Opticom infrared Emergency Vehicle Preemption (EVP) system. Opticom Model 700 and 500 series detectors and phase selectors are currently used at most signalized locations. Phase selector cards typically use existing cabinet input files rather than a separate card cage. Remote communication with phase selectors is not currently utilized.

4.2.11 Railroad Preemption

There are 16 locations throughout the City of Fort Collins that interconnect with railroad signals. The majority are logic ground circuits which activate a simple preempt with track clearance, dwell and exit phases.

4.3 Intelligent Transportation Infrastructure

4.3.1 Closed Circuit Television (CCTV) Cameras

There are 42 CCTV cameras maintained by the City of Fort Collins. All analog Panasonic cameras are Pan/Tilt/Zoom (PTZ) cameras, which are viewed and controlled using both the Panasonic system controllers and the Camera Cameleon software clients. IP based Panasonic and Axis

cameras are viewed and controlled through an internet browser. Types of cameras are broken down below.

- 9 Panasonic WV-CS854 analog CCTV cameras
- 16 Panasonic WV-CS954 analog CCTV cameras
- 15 Panasonic WV-NW964 IP CCTV cameras
- 2 Axis 232D IP CCTV cameras

Transport of video and PTZ control data for the analog based cameras is accomplished using point-to-point analog fiber transceivers (American FiberTek) or video encoders (PelcoNet) where Ethernet is available. The end use of the video signal remains analog NTSC video over coaxial cable into an analog Panasonic Video Matrix Switcher WH-SX850. Fiber optic transceivers are phased out and replaced with video encoder/decoder pairs, as failures occur.

4.3.2 Traffic Data Collectors

The City of Fort Collins has a variety of traffic data collection stations (to collect speed, volume, occupancy by lane at mid-block locations). Specifically, the City of Fort Collins currently operates twenty (20) Econolite video-based data cameras and twelve (12) Sensys wireless magnetometer-based in-pavement sensors.

4.3.3 Traffic Operations Center (TOC)

The City of Fort Collins TOC is located at 626 Linden Street, Fort Collins, CO 80522

The TOC consists of:

- A video wall made up of eight 50-inch display cubes
- A console with three workstations
- One Panasonic video matrix controller
- One Panasonic CPU
- A rack with controls that have connectivity to the existing Central Traffic Signal system via fiber optic switches
- Two LCD monitors with satellite television access
- AM/FM radio access via overhead speaker (speaker also is connected to audio of selected workstation PCs via audio mixer)

Twelve Mitsubishi LCD flat panel wall-mounted monitors were recently purchased as part of a project to replace the current video wall. These monitors use input cards to incorporate a variety of sources including analog RGB signals (BNC), digital video signals (DVI-D), analog video signals (BNC) and SDI signals (BNC).

All servers and two client PCs for the traffic signal system are housed in the TOC. Two additional PCs are located in an office and in the Traffic Signal test room.

5. Requirements of the New Traffic Signal Control System

5.1 Functional Requirements

The City of Fort Collins has identified functions that are required, are important or are desired in the new traffic signal control system software and controller firmware. **The list of functions appears in Appendix A, which has been attached as a separate Microsoft Excel file. Respondents must complete the spreadsheet as part of their submittal** indicating whether or not their system provides, partially provides or does not provide each item. The completed spreadsheet will be considered a binding document that will be specifically incorporated into the final contract with the selected Vendor and utilized in the development of acceptance testing plans. The requirements are not a comprehensive listing of details necessary for system implementation. It is the Vendor's responsibility to provide and implement the system such that it will fulfill the agreed upon requirements. The Vendor shall provide all software licenses required for a functional traffic signal control system installation, including operating systems and application software, for all signal controllers, TMC servers, workstations, laptops and mobile devices, as applicable.

The Functional Requirements in Appendix A are presented in tabular format. Each Vendor must complete and submit this matrix as part of their submittal. Submittals that do not include the Functional Requirements matrix shall be considered non-responsive.

The City of Fort Collins realizes that no single COTS software system is likely to meet all the requirements listed in the Functional Requirements matrix. The City of Fort Collins will select the submittal that presents the best combination of requirements satisfied along with additional features, cost and suitability. The Functional Requirements contains one row for each requirement.

5.1.1 Function Categories

Columns B, C, and D in the spreadsheet identify the relative importance of the function to The City of Fort Collins as follows:

M (Mandatory)

Requirements are features or functionalities that must be provided by the Vendor to fulfill the core mission of The City of Fort Collins Traffic. If the feature or functionality is not within the COTS standard product, the Vendor must clearly identify this fact or indicate that it can be provided through customization. Any cost required to implement this feature through customization must be included and clearly identified as an optional cost in the submittal.

I (Important)

Requirements are features or functionalities that are advantageous to The City of Fort Collins and enhance the functionality of the new traffic signal control system, but are not necessarily required as part of the initial implementation covered by this RFP process.

D (Desired) Requirements are features or functionalities that would be worthwhile to have in the initial implementation, but may not be available from the Vendor or The City of Fort Collins is considering implementation in the future.

5.1.2 Function Compliance

Columns G, H, and I in the spreadsheet must be filled in by the vendor to show whether their COTS products are fully “Compliant”, “Partially Compliant” or “Not Compliant” with the stated requirement as defined below:

- All functions identified with a “Compliant” response shall be assumed to be available in Ready to Manufacture (RTM) form at the time of submittal (i.e. beyond release candidate and beta testing) and each Vendor should be prepared to possibly demonstrate this feature during the System Demonstrations and Product Evaluations.
- All functions identified with a “Partially Compliant” response shall require further explanation from the Vendor in the “Comments” section. If the Vendor fails to provide an accompanying elaboration for the “Partially Compliant” status, The City of Fort Collins shall consider the requirement to be “Not Compliant”.
- All functions identified with a “Not Compliant” response shall be assumed to mean that the Vendor cannot or will not be able to meet this requirement without further customization or development of the COTS product.

5.1.3 Comments

Column J allows each Vendor to provide comments that qualify its answers and to document any assumptions made when responding. The comments should enhance The City of Fort Collins’s understanding of how the Vendor proposes to meet the requirement. The Comments column is provided for Vendors to provide the following information:

- *Current or Planned Availability* – Unless otherwise specified in the Comments section, The City of Fort Collins will assume that the requirement is currently available from the Vendor.

- *Included or Not Included* – Unless otherwise specified in the Comments section, the City of Fort Collins will assume that the requirement will be included by the Vendor. Each Vendor should also indicate in the comments if the requested feature requires any other optional component or module in order to be implemented and if the component/module is a COTS product or one that requires additional development.
- *Limited or Additional Functionality* – The Vendor should identify any limitations in how its product fulfills this requirement or describe any functionality in its product that exceeds this requirement.
- *Simultaneous Compliance of Functions* – Unless otherwise specified in the Comments section, The City of Fort Collins will assume all compliant functions can be simultaneously compliant with other compliant functions. For example, a comment to the exception may read, “The system cannot perform two or more simultaneous uploads or downloads if controllers are grouped across communication channels.”
- *Pertinent Comments* – The Vendor may include any comments it considers relevant to the discussion.

5.2 Proposed TMC Upgrades

5.2.1 Computer Hardware and Software

If additional equipment beyond the existing equipment described in section 4 is required for the Vendor’s system to function this will be documented. Vendors shall identify all additional servers and services required by their application. For example: database servers, application servers, web servers, file system access, and other back office requirements. For each identified component, Vendors should:

- Identify all supported hardware platforms and operating systems on which the component runs.
- Identify the number of installations of each supported component/hardware platform/operating system combination.
- Identify their primary/best supported component/hardware platform/operating system combination. The server-class and desktop OS supported by the vendor shall be listed. Furthermore, number of installations of each supported hardware platform and OS, along with the primary/best-supported hardware platforms and OS shall be noted. Vendors shall identify GIS requirements, including ESRI desktop versions required, ESRI geodatabase requirements, the need for specific layer/feature class definitions, and other GIS back office requirements.

5.3 New Local Controller Firmware

New local controller firmware shall fulfill the objectives defined in the Functional Requirements. The City of Fort Collins prefers that traffic signal control system software and local controller firmware come from the same Vendor to minimize non-compatibility issues. If a Vendor recommends local controller firmware from another company, it shall be clearly stated in its submittal what specific version of the local controller firmware from the other company is compatible with the Vendor's proposed traffic signal control system software. The bidding Vendor will be held responsible for ensuring integration of software components and that the system will meet the City's Functional Requirements. In general, it is recommended that the local firmware being proposed be selected based on how closely its capabilities meet the City's requirements.

5.3.1 2070 Controller Hardware

It is the intent of the City of Fort Collins to continue to use 2070 controller hardware.

5.3.2 Computer Hardware and Software

If additional equipment, controller hardware modifications or upgrades are required for the Vendor's system to function this should be documented in the Vendor's proposal.

6. Project Implementation

6.1 Project Schedule

It is the City's intent to have the new system fully operational by the end of 2012. A general phasing plan for installation is outlined below. The vendor should include a schedule in their proposal that shows the anticipated time frame for completion of each installation phase.

Phase 1 Installation

Phase 1 installation will be completed by the vendor. This phase will include the installation of the traffic signal system software in the TMC and controller firmware in test cabinets in the City's signal shop. Transfer of signal timing data from the existing system to the new system for this phase will be the responsibility of the vendor and will be completed by a licensed Professional Engineer in the State of Colorado. This phase is intended to verify basic functionality of the system and the communication protocols necessary for data exchange between the TMC and field controllers.

Phase 2 Installation

Phase 2 installation will be completed by the vendor. This phase will include the installation of controller firmware at 20 intersections as selected by the City and the establishment of communication between the central system software

and the field controllers. Transfer of signal timing data from the existing system to the new system for this phase will be the responsibility of the vendor and will be completed by a licensed Professional Engineer in the State of Colorado. Completion of this phase will set the stage for acceptance testing in phase 3.

Phase 3 Acceptance Testing

Acceptance testing will be as described in Section 7 and will be done using the system and 20 intersections installed in phase 2. In addition, staff training, as described in Section 9, should occur during this testing phase.

Phase 4 Project Completion

The remainder of intersections in the City will be transferred to the new system by City staff during phase 4. The vendor will transition to the technical support role as described in Section 9 at this time.

6.2 Vendor's Project Management Responsibilities

Project management shall be a key responsibility and a continuous function of the selected Vendor during phases 1 - 3. The Vendor must designate a dedicated project manager that will be committed to this project through the duration of the contract. The project manager must have the authority to make commitments and decisions that are binding on the Vendor.

The Vendor's project manager shall develop and maintain a master schedule and oversee expenditures to ensure tasks are completed on time and within budget. The project manager shall be responsible for all work performed by the Vendor and must review and approve all deliverables and documentation prior to submittal to The City of Fort Collins. The project manager is expected to oversee acceptance testing and the training of City staff. The project manager shall prepare progress reports and attend progress meetings. The project manager shall approve and submit invoices to the City Project Manager.

6.3 The City of Fort Collins's Project Management Responsibilities

The City of Fort Collins project manager will administer the Vendor's contract and will monitor project progress, schedule and budget. The project manager will review and approve all deliverables and documentation submitted by the Vendor. The project manager will also serve as the single point of contact for the Vendor. The project manager will participate in acceptance testing and will review and approve the results of each test. The project manager must approve training courses and documentation as well as participate in appropriate training courses. The project manager will review and approve submitted invoices for payment to the Vendor.

6.4 Progress Meetings

Progress meetings will be scheduled once every two weeks during phases 1 - 3 of the project. The meetings must be attended by the Vendor and the City of Fort Collins project managers, along with additional staff as needed. These meetings will be used to review progress reports, open action items, upcoming activities and written correspondence exchanged since the last meeting. During these progress meetings, the Vendor is expected to discuss technical aspects of the project and to review comments on documents submitted for approval. The Vendor's Project Manager will be responsible for developing and distributing meeting minutes via email.

6.5 Progress Reports

The Vendor shall prepare a progress report once every two weeks during phases 1 - 3. The report will be submitted to the City of Fort Collins at the progress meeting. The progress report must include the following items:

- An updated project schedule with deployment progress of the traffic signal control system software and controller firmware.
- An updated list of Vendor and City of Fort Collins action items with status and required completion dates.
- A description of current and anticipated project problem areas and steps required to address each problem.
- A summary of completed and upcoming Vendor activities.

7. Acceptance Testing

The selected Vendor is advised that they will be responsible for developing and executing the testing requirements of the traffic signal control system software along with local controller firmware. Since the successful implementation of the traffic signal control system software is dependent on a complex, integrated blend of software, firmware, hardware and processes, The City of Fort Collins considers this aspect of the procurement to be a critical part of the deployment.

Acceptance testing must confirm that system hardware, software and integration have been implemented successfully; and that the functional requirements of the City of Fort Collins have been met.

7.1 Acceptance Testing

The completed functional requirements spreadsheet submitted by the vendor will form the basis for acceptance testing along with the items listed below. Final acceptance testing shall include tests for the COTS traffic signal control system software, additional software modules implemented, controller firmware and communications between the field devices and the TMC components. The test period for final acceptance testing will be 30 days of error free operation. The City may choose to pause the testing period on days spent correcting

errors or verifying that the errors have been corrected without introducing new errors. If significant errors are discovered, The City of Fort Collins may choose to restart the 30 day acceptance test period with no additional cost to the City once the errors are corrected. The Vendor must provide on-site technical support, as needed, for all components of the central hardware and software during acceptance testing.

Final acceptance testing must verify the following:

- a) Central traffic signal control system software is properly installed and configured.
- b) 2070 controllers are operating properly with new firmware installed.
- c) All functional requirements are met.
- d) Integration of the central traffic signal control system software with existing TMC equipment, and the communications network is complete and successful
- e) Interfaces between the central traffic signal control system and additional subsystem modules as applicable, function properly.
- f) Data conversion by the Vendor is complete and valid.
- g) Alarms and reports are generated as designed.
- h) Bug fixes are successful.

The City of Fort Collins will evaluate the success of each test. The test procedures conducted by the Vendor must not prevent the operation of existing systems or cause system interruptions unless otherwise approved by The City of Fort Collins.

7.2 Test Reports

The Vendor shall record all test results. Each report should follow the steps enumerated in the test procedures. The following items must be included in the test reports:

- a) Reference to the appropriate test and test procedures.
- b) Date of test.
- c) Test results for each test segment, including a pass/fail indication and any modifications made to the procedures during the test.
- d) Identification of the Vendor's tester and of The City of Fort Collins's representative witnessing the test.
- e) Provision for comments by The City of Fort Collins's representative.
- f) Copies of any variance reports generated.
- g) System logs or printouts saved as part of the test.

7.2.1 Variance Reports

A variance report shall be prepared by either the Vendor or The City of Fort Collins personnel each time a deviation from any part of the functional requirements is detected. The Vendor's project manager must collect and maintain variance reports. Variance reports must include a complete description of the variance including the following items:

- b) The date and time the variance was first discovered
- c) Variance classification (see Class descriptions below)
- d) Variance status (open, closed or pending)
- e) Appropriate references to the functional requirements or test procedures
- f) A description of the test conditions at the time the variance was detected and the two steps performed prior to the failure
- g) Identification of the Vendor's and/or The City of Fort Collins' witness submitting the report Variances should be classified by the originating organization's project manager and reviewed by both project managers, with the City of Fort Collins project manager having the final right of approval. Each variance must be assigned to one of the following four classes, depending on its severity and impact:

Class A: A severe variance (dead crash or multiple function failure) that prevents invalidates or significantly impairs system operations. Testing must stop for immediate evaluation and correction by the Vendor. The City of Fort Collins reserves the option to restart the 30 day acceptance testing period due to Class A variances.

Class B: A significant variance (essential function failure with operator unaware).

The City of Fort Collins may pause the testing period or allow testing to continue. If testing is allowed to continue, the variance must be corrected by the end of the current session or day of test.

Class C: A significant variance (partial function failure with operator notified). The City of Fort Collins may pause the testing period or allow testing to continue. If testing is allowed to continue, the variance must be corrected by the end of the current session or day of test.

Class D: A minor or isolated variance including annoying features. Testing will continue and the variance will be corrected

and tested at a mutually agreed upon time (e.g. at the end of the test or later in the test period).

7.2.2 Disposition of Variances

The Vendor shall document actions taken to correct variances. Sufficient information should be provided to enable a City of Fort Collins representative to determine the need for retesting the function, for testing interaction with any previously tested function and for updating appropriate documentation as a result of the corrective action. The City of Fort Collins must approve variance corrections that would result in a change to an approved document prior to their implementation by the Vendor. The variance report should be completed when the Vendor and The City of Fort Collins representatives acknowledge, by signatures, correction of the variance. Variance reports must be made available to The City of Fort Collins. The Vendor must maintain and periodically distribute (frequency of distribution based on testing activity) a variance summary that lists for each variance, the variance number, functional identification, variance class and current status.

7.3 Unstructured Testing

A period of unstructured testing must be allocated to allow The City of Fort Collins representatives to verify proper operation of the traffic signal control system software under conditions not specifically included in the approved test procedures. Unstructured testing must be conducted in compliance with the following condition:

- a) One week during the 30 day test period must be reserved for unstructured testing of the traffic signal control system software by The City of Fort Collins representatives. The Vendor's tester may be present for consultation with The City of Fort Collins representatives during the unstructured test period.

7.4 Final Acceptance and Warranty Period

The City of Fort Collins will grant final acceptance of the traffic signal control system software, firmware, hardware, configuration, data conversion, training and other services following the Vendor's completion of all such work in accordance with the contract and after successful completion of the 30 day acceptance testing period. The established acceptance date will mark the beginning of the Vendor's initial warranty period. The City of Fort Collins will make the appropriate milestone payment at this time.

If any portion of the system or services is deemed unacceptable to The City of Fort Collins the Vendor must repair or replace unacceptable traffic signal control system hardware, firmware, software, customizations or services within a mutually agreed upon time period at no additional charge to The City of Fort

Collins. If the Vendor does not correct or replace the unacceptable system component or services within the specified time period, or such system component or services are deemed unacceptable by The City of Fort Collins, it may, at its option, return the unacceptable component to the Vendor with an explanation of why it is unacceptable. The Vendor must refund to The City of Fort Collins any amounts paid for said component prior to final acceptance. Failure to replace or correct unacceptable components or services may be grounds for default.

8. Training

All training required for The City of Fort Collins to successfully operate and manage the traffic signal control system shall be provided as part of the contract price. Any travel or lodging expenses for training shall be included in the contract price.

Training must be suitable for two target audiences as identified below:

- Traffic Systems Engineers
- Traffic signal technicians

8.1 Training Locations

Training will be conducted at the the City of Fort Collins TMC, Traffic Signal Shop and field locations as appropriate.

8.2 Instructors

The instructor or instructors provided by the Vendor must have a full understanding of the traffic signal control system, hardware and firmware. Instructors must demonstrate a thorough knowledge of the material covered in the training and familiarity with the training manuals. If prerecorded lectures or other video presentations are part of the training, the instructor or a qualified substitute must also supplement recorded material. A qualified instructor must present all material to The City of Fort Collins in person. The City of Fort Collins reserves the right to review and approve all instructors. Should an instructor prove unsatisfactory to The City of Fort Collins, the Vendor must provide a suitable replacement.

8.3 Manuals and Instructional Aids

Upon completion of the training, all training materials, including but not limited to instructor's manuals, training manuals, video and DVD/CDs will become the property of The City of Fort Collins. As part of the documentation, the Vendor must provide The City of Fort Collins with all changes and revisions to the training manuals and other training documentation. The City of Fort Collins reserves the right to copy all training manuals and aids for use in future City of Fort Collins training sessions. The Vendor must provide The City of Fort Collins with licenses for any materials that the Vendor does not own copyright. The Vendor must furnish for use during training all special tools, equipment, training

aids and any other materials required to train course participants. The number of special tools and other training equipment must be adequate for the number of participants attending the course.

9. Documentation

The Vendor shall provide The City of Fort Collins with complete documentation of the traffic signal control system. Each document must be identified by a document number, The City of Fort Collins contract number and date. Where a document is revised for any reason, each such revision must be indicated by the revision number, date and explanation in a revision block along with an indication of official approval by the Vendor's project manager.

The City of Fort Collins requires a copy of all final Vendor-supplied documentation in an electronic file format compatible with commercially available software such as Microsoft Office or Adobe Acrobat.

10. Software and Firmware Terms

The Vendor shall provide The City of Fort Collins with software and firmware licensing, warranties, technical support and upgrades for all software and firmware products in the traffic signal control system software, including COTS, customized, 3rd party products and database software. The Vendor must provide the terms for each software/firmware component. It is the Vendor's responsibility to describe clearly the terms that are included within the scope and budget of its submittal. Third party licenses must be paid for within the submittal to cover the warranty and maintenance periods.

10.1 Licensing Terms

The Vendor shall provide all necessary software and firmware licenses used for this project, including installations of software in servers, workstations, field laptops and traffic signal controllers.

The Vendor must describe the licenses for all software and firmware, including the answers to the following:

1. Describe the structure of license between server and client components.
2. Are "users" counted as the number of client installations or as the maximum number of concurrent users or processes?
3. How is the number of traffic signal controllers and/or signalized intersections related to the software licensing costs? What will be the software licensing cost when adding to signalized intersections?
4. Do different application modules and software packages have different numbers of licensed concurrent users?
5. What is the maximum number of users allowed at the price quoted for the license(s)?

The terms and conditions of software and firmware licenses will be incorporated into the final contract.

10.2 Warranty Terms

The Vendor shall describe the proposed initial warranty including the following:

1. Duration or term (minimum of two years) (Warranty Period)
2. Description of services
3. Expected response times
4. Maximum number of repairs allowed for any single failure of the system (minimum once per month)
5. Hours of response
6. If upgrades are included in the warranty and if The City of Fort Collins is required to pay for associated configuration costs.

The cost of the warranty must be included in the cost of the software license. The Warranty Period, including manufacturer warranty, will begin on the date of final acceptance, as described in Section 7.4. The duration of the Warranty Period does not include time spent repairing significant software failures.

The terms and conditions of the software warranty will be incorporated into the final contract.

10.3 Maintenance Terms

The Vendor shall provide system maintenance for at least one year beyond the term of the warranty (Maintenance Period).

10.4 Technical Support Terms

Technical support shall be provided by the Vendor to assist The City of Fort Collins with routine questions regarding the use of the software.

The Vendor must provide technical support during system integration, the Warranty Period and the Maintenance Period. The Vendor must describe the proposed technical support terms, including the proposed methods of communication (e.g., phone, email, Web, on-site, etc.), hours of availability and maximum response times.

10.5 Upgrade Terms

Software upgrades shall be considered enhancements to the software code to add new features or functions to the system or software patches to correct errors, defects, malfunctions and security issues.

The Vendor must provide all released upgrades to the system at no cost through the Warranty Period. Additional upgrades provided during the Maintenance Period, at no additional charge, will be evaluated in the ranking of the written responses by the Selection Committee. The traffic signal control system software must retain all system, user configuration and preference changes when upgrades are applied. The Vendor must describe the upgrade terms and how new version releases will accommodate prior system customization.

11. Evaluation and Selection Process

A Selection Committee will evaluate responses as described below to rank the Vendors submitting proposals. Evaluation steps include verification of minimum screening requirements, ranking of proposals, system demonstrations/interviews with Vendors and reference checks.

11.1 Evaluation of Proposals

The Selection Committee will evaluate each proposal based on the criteria as follows:

- **Vendor Qualifications, and Experience:** Based on firm experience, qualifications and personnel that will be involved on this project. Qualifications and Experience should include:
 - Location of similar Projects.
 - Name, address, and phone number of public agency reference(s) overseeing the Project.
 - Samples (preferably three via a web link or “pdf” files) of similar Projects.

- **List of Project Personnel:** This list should include the identification of the contact person with primary responsibility for this contract, the personnel proposed for this contract, and any supervisory personnel, including partners and/or subcontractors, and their individual areas of responsibility. A résumé for each professional and technical person assigned to the contract, including partners and/or subcontractors, shall be submitted. The résumés shall include at least three references from previous assignments.

- **Organization Chart/Proposed Project Team:** An organization chart containing the names of all key personnel and subcontractors with titles and their specific task assignment for this contract shall be provided in this section.
 - **Methods and Approach:** Based on the Project Approach section of the response. Favorable consideration will be given for

Vendor's understanding of The City of Fort Collins' project and quality of the proposed approach.

- **Scope of Work**: Based upon the proposal's responsiveness to the Scope of Work described in the RFP, including: implementation approach, thoroughness of acceptance testing procedures, depth of training to The City of Fort Collins personnel, completeness of documentation and coverage of software terms.
- **Functional Requirements**: Based on the proposal's responsiveness to the Functional Requirements matrix (Appendix A). Requirements labeled as Mandatory and Important will be evaluated. High ranking responses are expected to include all features marked as Mandatory and many features marked as Important. In addition, high ranking responses are expected to contain information describing the Vendor's capabilities and experience with the Desired features as well as other innovative features offered by the Vendor's products.
- **Cost and Work Hours**: Based on total cost and hours as reported on the Fee Proposal.
- **Availability**: Describe the availability of project personnel to participate in this project in the context of the firm's other commitments.
- **COTS Product Description** and documentation that the product will provide the functional requirements described in this RFP.

Appendix A includes a spreadsheet showing the City's traffic signal control system software functional requirements and desired capabilities. Each respondent is required to complete this spreadsheet as part of its submittal.

Proposals should be limited to a maximum of 25 pages (excluding covers and dividers).

Respondents to this RFP are encouraged to offer any innovative concepts or ideas pertaining to system capabilities, the rollout of the new traffic signal control system software, implementation of new local controller firmware and cost cutting strategies that would benefit the City in this endeavor.

The Selection Committee will rank each written response. The City of Fort Collins reserves the right in its sole and absolute discretion to determine which, if any, Vendors warrant consideration to participate in the next step in the process: System Demonstrations and Interviews.

11.2. System Demonstrations and Vendor Interviews

Each Vendor may be asked to demonstrate its system by presenting a working simulation of the proposed system. The product demonstration will be held at The City of Fort Collins's Traffic

Operations Center. The Vendor must provide all hardware and software components. The system demonstration must include the basic functional components of the system necessary to simulate the system in a lab environment. The system demonstration must include a 2070 traffic signal controller utilizing the proposed firmware. The Selection Committee must be able to interact with the product simulation through an unstructured hands-on simulation and question/answer period.

More details on this system demonstration will be provided to the Vendors invited to participate in this Section. The Vendor's project manager and other key team members who will be providing training and technical support should attend the system demonstration and be prepared to answer questions while working with City staff.

Vendor Statement:

I have read and understand the specifications and requirements for this RFP and I agree to comply with such specifications and requirements. I further agree that the method of award is acceptable to my company. I also agree to complete SERVICES AGREEMENT with the City of Fort Collins within 30 days of notice of award. If contract is not completed and signed within 30 days, City reserves the right to cancel and award to the next highest rated firm.

NOTE: VENDOR STATEMENT IS TO BE SIGNED & RETURNED WITH YOUR PROPOSAL. VENDOR IS TO ALSO INCLUDE THE REQUIRED INSURANCE CERTIFICATE NAMING THE CITY OF FORT COLLINS AS AN ADDITIONAL INSURED.

FIRM NAME: _____

ADDRESS: _____

EMAIL ADDRESS: _____ **PHONE:** _____

BIDDER'S NAME: _____

SIGNATURE: _____

PRIMARY SERVICES ISSUES CONTACT: _____

TELEPHONE: _____ **FAX:** _____

EMAIL: _____

CELL: _____ **EMERGENCY:** _____

BACKUP: _____

Compensation and Contract Process

1. After contract award, progress invoices shall be billed in quarterly installments, subject to review and approval by the City's Project Manager. City payment terms will be Net 30 Days from receipt of invoice.
2. The City reserves the right to award directly as a result of the written proposals. The City may or may not opt to conduct oral interviews.
3. The selected Contractor shall be expected to sign the City's standard Services Agreement prior to commencing Services (see sample attached to this Proposal).

Review and Assessment

Proposers will be evaluated on the following criteria. These criteria will be the basis for review of the written proposals and any optional interview session. The rating scale shall be from 1 to 5, with 1 being a poor rating, 3 being an average rating, and 5 being an outstanding rating.

WEIGHTING FACTOR	QUALIFICATION	STANDARD
2.0	Scope of Proposal	Does the proposal show an understanding of the project objective, methodology to be used and results that are desired from the project?
2.0	Assigned Personnel	Do the persons who will be working on the project have the necessary skills? Are sufficient people of the requisite skills assigned to the project?
1.0	Availability	Can the work be completed in the necessary time? Can the target start and completion dates be met? Are other qualified personnel available to assist in meeting the project schedule if required? Is the project team available to attend meetings as required by the Scope of Work?
1.0	Motivation	Is the firm interested and are they capable of doing the work in the required time frame?
2.0	Cost and Work Hours	Do the proposed cost and work hours compare favorably with the Project Manager's estimate? Are the work hours presented reasonable for the effort required in each project task or phase?
2.0	Firm Capability	Does the firm have the support capabilities the assigned personnel require? Has the firm done previous projects of this type and scope?

Reference Evaluation (Top Ranked Firm)

The Project Manager will check references using the following criteria. The evaluation rankings will be labeled Satisfactory/Unsatisfactory.

QUALIFICATION	STANDARD
Overall Performance	Would you hire this Professional again? Did they show the skills required by this project?
Timetable	Was the original Scope of Work completed within the specified time? Were interim deadlines met in a timely manner?
Completeness	Was the Professional responsive to client needs; did the Professional anticipate problems? Were problems solved quickly and effectively?
Budget	Was the original Scope of Work completed within the project budget?
Job Knowledge	If a study, did it meet the Scope of Work?

PLEASE GO TO www.fcgov.com/purchasing TO REGISTER IN OUR E-PROCUREMENT SYSTEM FOR FUTURE BID OPPORTUNITIES! BE SURE TO SELECT ALL APPROPRIATE COMMODITY CODES.

COMMODITY CODES USED FOR THIS RFP:

550-90 Transportation Systems, Intelligent (An automated information system which provides traffic management, communications, and analysis of data as a minimum)

920-32 Intelligent Transportation System Software (To Include Design, Development, and Maintenance Services)

918-29 Computer Software Consulting

918-94 Traffic Consulting

SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below by and between THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, hereinafter referred to as the "City" and _____, hereinafter referred to as "Service Provider".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. Scope of Services. The Service Provider agrees to provide services in accordance with the scope of services attached hereto as Exhibit "A", consisting of () page and incorporated herein by this reference.

2. The Work Schedule. [Optional] The services to be performed pursuant to this Agreement shall be performed in accordance with the Work Schedule attached hereto as Exhibit "B", consisting of () page, and incorporated herein by this reference.

3. Time of Commencement and Completion of Services. The services to be performed pursuant to this Agreement shall be initiated within () days following execution of this Agreement. Services shall be completed no later than . Time is of the essence. Any extensions of the time limit set forth above must be agreed upon in a writing signed by the parties.

4. Contract Period. [Option 1] This Agreement shall commence upon the date of execution shown on the signature page of this Agreement and shall continue in full force and effect for one (1) year, unless sooner terminated as herein provided. In addition, at the option of the City, the Agreement may be extended for an additional period of one (1) year at the rates provided with written notice to the Professional mailed no later than ninety (90) days prior to contract end.

5. Contract Period. [Option 2] This Agreement shall commence _____, 200_____, and shall continue in full force and effect until _____, 200_____, unless sooner terminated as

herein provided. In addition, at the option of the City, the Agreement may be extended for additional one year periods not to exceed () additional one year periods. Renewals and pricing changes shall be negotiated by and agreed to by both parties. The Denver Boulder Greeley CPIU published by the Colorado State Planning and Budget Office will be used as a guide. Written notice of renewal shall be provided to the Service Provider and mailed no later than ninety (90) days prior to contract end.

6. Delay. If either party is prevented in whole or in part from performing its obligations by unforeseeable causes beyond its reasonable control and without its fault or negligence, then the party so prevented shall be excused from whatever performance is prevented by such cause. To the extent that the performance is actually prevented, the Service Provider must provide written notice to the City of such condition within fifteen (15) days from the onset of such condition. [Early Termination clause here as an option

7. Early Termination by City/Notice. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Service Provider. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties. All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

CITY:
CITY OF FORT COLLINS
ATTN: PURCHASING
PO Box 580
FORT COLLINS, CO 80522

COPY TO:
CITY OF FORT COLLINS
ATTN:
PO Box 580
FORT COLLINS, CO 80522

SERVICE PROVIDER:

In the event of early termination by the City, the Service Provider shall be paid for services rendered to the date of termination, subject only to the satisfactory performance of the Service Provider's obligations under this Agreement. Such payment shall be the Service Provider's sole right and remedy for such termination.

8. Contract Sum. The City shall pay the Service provider for the performance of this

Contract, subject to additions and deletions provided herein, per the attached Exhibit " ", consisting of page , and incorporated herein by this reference.

9. City Representative. The City will designate, prior to commencement of the work, its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the services provided under this agreement. All requests concerning this agreement shall be directed to the City Representative.

10. Independent Service provider. The services to be performed by Service Provider are those of an independent service provider and not of an employee of the City of Fort Collins. The City shall not be responsible for withholding any portion of Service Provider's compensation hereunder for the payment of FICA, Workmen's Compensation or other taxes or benefits or for any other purpose.

11. Personal Services. It is understood that the City enters into the Agreement based on the special abilities of the Service Provider and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Service Provider shall neither assign any responsibilities nor delegate any duties arising under the Agreement without the prior written consent of the City.

12. Acceptance Not Waiver. The City's approval or acceptance of, or payment for any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement or cause of action arising out of performance of this Agreement.

13. Warranty.

a. Service Provider warrants that all work performed hereunder shall be performed with the highest degree of competence and care in accordance with accepted standards for work of a similar nature.

b. Unless otherwise provided in the Agreement, all materials and equipment incorporated into any work shall be new and, where not specified, of the most suitable grade of their respective kinds for their intended use, and all workmanship shall be acceptable to City.

c. Service Provider warrants all equipment, materials, labor and other work, provided under this Agreement, except City-furnished materials, equipment and labor, against defects and nonconformances in design, materials and workmanship/workwomanship for a period beginning with the start of the work and ending twelve (12) months from and after final acceptance under the Agreement, regardless whether the same were furnished or performed by Service Provider or by any of its subcontractors of any tier. Upon receipt of written notice from City of any such defect or nonconformances, the affected item or part thereof shall be redesigned, repaired or replaced by Service Provider in a manner and at a time acceptable to City.

14. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.

15. Remedies. In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

16. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs,

personal representatives, successors and assigns of said parties.

17. Indemnity/Insurance.

a. The Service Provider agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the performance of any service hereunder.

b. The Service Provider shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property.

c. Without limiting any of the Service Provider's obligations hereunder, the Service Provider shall provide and maintain insurance coverage naming the City as an additional insured under this Agreement of the type and with the limits specified within Exhibit , consisting of one (1) page, attached hereto and incorporated herein by this reference. The Service Provider before commencing services hereunder, shall deliver to the City's Director of Purchasing and Risk Management, P. O. Box 580 Fort Collins, Colorado 80522 one copy of a certificate evidencing the insurance coverage required from an insurance company acceptable to the City.

18. Entire Agreement. This Agreement, along with all Exhibits and other documents incorporated herein, shall constitute the entire Agreement of the parties. Covenants or representations not contained in this Agreement shall not be binding on the parties.

19. Law/Severability. The laws of the State of Colorado shall govern the construction interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

20. Prohibition Against Employing Illegal Aliens. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Service Provider represents and agrees that:

a. As of the date of this Agreement:

1. Service Provider does not knowingly employ or contract with an illegal alien who will perform work under this Agreement; and

2. Service Provider will participate in either the e-Verify program created

in

Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "e-Verify Program") or the Department Program (the "Department Program"), an employment verification program established pursuant to Section 8-17.5-102(5)(c) C.R.S. in order to confirm the employment eligibility of all newly hired employees to perform work under this Agreement.

b. Service Provider shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.

c. Service Provider is prohibited from using the e-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

d. If Service Provider obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Service Provider shall:

1. Notify such subcontractor and the City within three days that Service Provider has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Service Provider shall not terminate

the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

e. Service Provider shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

f. If Service Provider violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, Service Provider shall be liable for actual and consequential damages to the City arising out of Service Provider's violation of Subsection 8-17.5-102, C.R.S.

g. The City will notify the Office of the Secretary of State if Service Provider violates this provision of this Agreement and the City terminates the Agreement for such breach.

21. Special Provisions. [Optional] Special provisions or conditions relating to the services to be performed pursuant to this Agreement are set forth in Exhibit " ", consisting of () pages, attached hereto and incorporated herein by this reference.

CITY OF FORT COLLINS, COLORADO
a municipal corporation

By: _____
James B. O'Neill II, CPPO, FNIGP
Director of Purchasing and Risk Management

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

By: _____

PRINT NAME

CORPORATE PRESIDENT OR VICE PRESIDENT

Date: _____
(Corporate Seal)

ATTEST:

CORPORATE SECRETARY

EXHIBIT “ ”
INSURANCE REQUIREMENTS

1. The Service Provider will provide, from insurance companies acceptable to the City, the insurance coverage designated hereinafter and pay all costs. Before commencing work under this bid, the Service Provider shall furnish the City with certificates of insurance showing the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement:

"The insurance evidenced by this Certificate will not be cancelled or materially altered, except after ten (10) days written notice has been received by the City of Fort Collins."

In case of the breach of any provision of the Insurance Requirements, the City, at its option, may take out and maintain, at the expense of the Service Provider, such insurance as the City may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Service Provider under this Agreement. The City, its officers, agents and employees shall be named as additional insureds on the Service Provider's general liability and automobile liability insurance policies for any claims arising out of work performed under this Agreement.

2. Insurance coverages shall be as follows:

A. Workers' Compensation & Employer's Liability. The Service Provider shall maintain during the life of this Agreement for all of the Service Provider's employees engaged in work performed under this agreement:

1. Workers' Compensation insurance with statutory limits as required by Colorado law.
2. Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

B. Commercial General & Vehicle Liability. The Service Provider shall maintain during the life of this Agreement such commercial general liability and automobile liability insurance as will provide coverage for damage claims of personal injury, including accidental death, as well as for claims for property damage, which may arise directly or indirectly from the performance of work under this Agreement. Coverage for property damage shall be on a "broad form" basis. The amount of insurance for each coverage, Commercial General and Vehicle, shall not be less than \$500,000 combined single limits for bodily injury and property damage.

In the event any work is performed by a subcontractor, the Service Provider shall be responsible for any liability directly or indirectly arising out of the work performed under this Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

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

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related subcontracts of \$10,000 or more.)

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

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

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

- a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
- b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all

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

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

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

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

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

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

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

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

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

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

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for

minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The contractors will submit an annual report to the SHA

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

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

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

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

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

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

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

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

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour

Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. Helpers:

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

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

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

V. STATEMENTS AND PAYROLLS

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

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

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

2. Payrolls and Payroll Records:

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

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

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

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

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

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made

either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

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

e. The weekly submission of a properly executed 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 2d of this Section V.

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

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

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

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

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

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

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

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

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a subcontractor, assignee, or agent of the prime contractor.

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

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

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

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

VIII. SAFETY: ACCIDENT PREVENTION

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

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

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

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality,

quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification - Primary Covered Transactions:

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

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

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

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

transaction for cause of default.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Covered Transactions:

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

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

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

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

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

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

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

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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

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

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

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

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

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-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 his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT PREFERENCE FOR
APPALACHIAN CONTRACTS**

(Applicable to Appalachian contracts only.)

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

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

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

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

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification,

(c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

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

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

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