Item No. 13b

AGENDA ITEM REQUEST FORM

Town Manager's Office
Department Submitting Request

Bud Bentley
Assistant Town Manager

REGULAR COMMISSION MTG **July 12, 2011**
Meeting Dates - 7:00 PM

☐ Presentation ☐ Reports **Consent** ☐ Ordinance
☒ Resolution ☐ Quasi Judicial ☐ Old Business ☐ New Business

SUBJECT TITLE: Resolution (**Exhibit 1**) Authorizing a Professional Construction, Engineering and Inspection Services Agreement with Carnahan Proctor & Cross, Inc. for the A1A North Enhancement Project

EXPLANATION: The Town was awarded a $441,700 Local Agency Program (**LAP**) grant from the Florida Department of Transportation (**FDOT**) for Hardscape and Landscape Improvements on SR A1A (North Ocean Drive) from Pine Avenue to Terra Mar Drive. The Town's match is $205,400 for a total construction budget of $647,100. In addition, FDOT funded the design costs of $58,300.

In compliance with FSS 287.055 (Consultants Competitive Negotiation Act) and FDOT requirements, a Request For Proposals (**RFP**) was issued to solicit proposals from qualified firms to provide Professional Construction, Engineering and Inspection Services (**CEI**). Carnahan, Proctor and Cross, Inc. was ranked by the evaluation committee as the most qualified firm to provide these services and at its May 24, 2011, meeting, the Commission approved the ranking and authorized staff to negotiate a contract.

FDOT originally advised us that CEI services for LAP projects typically run 12% of the project cost estimate. However, in recent discussions with them they advise that fees often run higher for the more modest projects because the CEI contractor cannot achieve economies of scale. The LBTS project is considered a small project by DOT standards. While the construction components included in this project are relatively common and straightforward, the administrative burden of FDOT grant compliance is both cumbersome and substantial

Carnahan Cross Proctor came in with an original proposal of $123,000, which amounted to19% of the engineer's estimate and 25% of the construction bid. Staff has negotiated firmly and is presenting for Commission approval a contract for $77,669.36 if the project is completed within the 150 calendar day time period specified in the construction contract. If the project construction goes beyond 150 calendar days, we will be charged for their direct labor plus their FDOT-approved multiplier for benefits, overhead and profit.

We spent considerable time documenting the CEI services to be provided and believe they are reasonable and necessary to meet the FDOT grant requirements. The cost of the CEI Services contract is 12% of the Engineer's estimate and 15.8% of the construction bid. In addition, we received an excellent construction bid so the percentage compared to the construction went up although the dollar amount of the CEI contract stayed the same. We have negotiated the attached contract (**Exhibit to the Resolution**) with Carnahan, Proctor & Cross, which includes all of necessary administrative and field services required to insure the project constructed by the general contractor in compliance with all applicable FDOT administrative and technical requirements, as well as to provide for all documentation required for reimbursement of construction costs from FDOT.

Now that we have a construction bid of $491,204, we know the cost of the CEI contract can be paid from the project budget and no additional Town funds are required.

RECOMMENDATION: Commission approval of the Resolution (**Exhibit 1**) is recommended.

Reviewed by Town Attorney

☒ Yes ☐ No

Town Manager Initials CAA

EXHIBITS: 1. Resolution (contract is an exhibit to the resolution)

RESOLUTION NO. 2011-20

A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH CARNAHAN PROCTOR AND CROSS, INC. FOR CONSTRUCTION, ENGINEERING AND INSPECTION SERVICES FOR HARDSCAPE AND LANDSCAPE ENHANCEMENTS ALONG A1A IN THE AMOUNT OF $77,669.36; DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE THE AGREEMENT; PROVIDING FOR REPEAL OF ANY CONFLICTING RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Lauderdale-By-The-Sea issued a Request For Proposals No. 11-01-01 on or about April 1, 2011 for professional construction, engineering and inspection services for hardscape and landscape enhancements along A1A (the Project") in accord with a Local Agency Program Agreement (the "LAP Agreement") between the Town and the Florida Department of Transportation; and

WHEREAS, Carnahan Proctor and Cross, Inc. was ranked as the highest proposer among the firms which responded; and

WHEREAS, the Town will fund the part of the Project involving this Agreement which involves construction, engineering and inspection of the Project; and

WHEREAS, the Town finds it to be in the best interest of the community to engage Carnahan Proctor and Cross, Inc. in accord with the attached Agreement to perform these services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

Section 1. Each "WHEREAS" clause set forth is true and correct and hereby incorporated by this reference.

Section 2. The Town Manager is hereby authorized to prepare and execute, on behalf of the Town, the Professional Services Agreement (the "Agreement") with Carnahan Proctor and Cross, Inc. in substantially the form attached hereto as Exhibit "1," with such non-material changes as may be approved by the Town Manager and Town Attorney, and such other documents necessary to implement the terms of the Agreement.

Section 3. The Town Manager and/or her designee and the Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. The dollar amount of the funds being sought is $77,669.36.

Section 5. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. This resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this _____ day of _____, 2011.

_____
Mayor Roseann Minnet

Attest:

_____
June White, CMC, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

_____
Susan L. Trevarthen, Town Attorney

EXHIBIT 1

AGREEMENT

For Construction, Engineering and Inspection Services

Between

Town of Lauderdale-By-The-Sea

And

Carnahan Proctor and Cross, Inc.

A G R E E M E N T

For Construction, Engineering and Inspection Services

Between

Town of Lauderdale-By-The-Sea

And

Carnahan Proctor and Cross, Inc.

AGREEMENT

For Construction, Engineering and Inspection Services
Between

The Town of Lauderdale-By-The-Sea

And

Carnahan Proctor and Cross, Inc.

Project: Construction, Engineering and Inspection Services
for A1A Hardscape and Landscape Enhancements RFP 11-01-01

THIS AGREEMENT is made between the Town of Lauderdale-By-The-Sea, Florida, a Florida municipal corporation, (hereinafter referred to as the "**TOWN**") and Carnahan Proctor and Cross, Inc. a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the "**CONSULTANT**"), whose principal place of business is 6101 West Atlantic Boulevard, 2nd Floor, Margate, Florida 33063-5157.

WHEREAS, the TOWN solicited proposals from qualified professionals and selected the CONSULTANT to provide construction, engineering, inspection and administrative services with respect to the A1A North Hardscape and Landscape Enhancement Project; and

WHEREAS, the CONSULTANT is willing and able to perform such professional, services for the TOWN within the terms and conditions set forth in this Agreement (hereinafter referred to as the Agreement"); and

WHEREAS, the purpose of this Agreement is to set forth certain terms and conditions for the scope of the work required herein and by RFP 11-01-01.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the TOWN and CONSULTANT agree as follows:

SECTION 1. DEFINITIONS

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation**: The total amount indicated in Exhibit "B" which will be paid by the TOWN for the Consultant's professional services described herein and on Exhibit "B", inclusive of reimbursable expenses (also referred to as "Contract Price").

1.2 **Reimbursable Expenses**: The direct non-salary expenses directly attributable to the Project. Reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Project; cost of

reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; and travel expenses.

1.3 **Travel Expenses**: Travel expenses, whether within or outside of Broward County, shall not be reimbursed and are considered part of the agreed Compensation, unless CONSULTANT has secured advance written authorization for additional travel from the Town Manager. All approved travel expenses will be reimbursed in accordance with the Town's adopted travel policy.

1.4 **Work**: The services required herein, described on Exhibit "A" and as provided in RFP 11-01-01 ("the RFP").

SECTION 2. GENERAL REQUIREMENTS

2.1 **Scope of Work**: The scope of the Work required by this Agreement is set forth in the requirements of this Agreement, the RFP, and as described in Exhibit "A".

2.2 **Deliverables**: Deliverables are specified in Exhibit "A".

2.3 **Time and Schedule of Performance and Term**: The term of this Agreement shall commence upon execution of this Agreement by all parties and upon award of the construction bid to the general contractor by TOWN, and continue until all obligations of CONSULTANT hereunder are completed. The time of performance ("Contract Time") shall be throughout and during the construction of the Project until completed and approved by Town. Consultant acknowledges that if, at any time, TOWN does not go forward with the A1A North Hardscape and Landscape Enhancement Project, this Agreement shall be of no further force and effect.

2.4 **Compensation**: Consultant shall charge the TOWN for professional services at those hourly fees or lump sum as specified in Exhibit "B" ("Contract Price") in all of the percentage amounts as indicated in Exhibit "B". Any additional Work required hereunder by Contract Amendment shall be on an hourly basis with a maximum amount of compensation that may not be exceeded without additional approval. Hourly fees are set forth using the multipliers for Overhead, FCCM and Expense contained in Exhibit "B."

2.5 **Personnel Assigned**: There shall be no subcontracts for the Work required under this Agreement. All employees of CONSULTANT who will work on the services specified herein shall be approved in advance by TOWN. TOWN may object to any such employees for any reason. In such event, CONSULTANT shall substitute alternate employees for the services to be rendered.

2.6 **Contract Documents:** The Contract Documents for this Project shall incorporate this Agreement, all exhibits hereto, the RFP, CONSULTANT'S response to the RFP, any amendments hereto, any documents required by CONSULTANT hereunder, including without limitation, licenses and insurance certificates and any authorization required to perform services hereunder required by governmental agencies or the State. In the event that any of the terms or conditions of the foregoing documents conflict with the remaining Contract Documents, the

individual documents shall govern in the order listed. The Agreement shall be deemed to incorporate all terms of the Contract Documents.

SECTION 3. TERMINATION

3.1 **Termination for Convenience**: This Agreement may be terminated or suspended by the TOWN for convenience upon thirty (30)-calendar days written notice to the CONSULTANT.

3.2 **Termination for Cause**: This Agreement may be terminated by either party upon five (5) calendar days written notice to the other party should the other party fail substantially to perform in accordance with material terms of this Agreement through no fault of the party initiating the termination. In the event that CONSULTANT abandons this Agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify the TOWN against any loss pertaining to this termination, including the cost of obtaining the additional services required hereunder as well as all other remedies available. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court by a court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a termination for convenience under Section 3.1 of this Agreement.

SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES

4.1 **Changes Permitted.** Changes in the Scope of Services of this Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by Contract Amendment without invalidating this Agreement.

4.2 **Contract Amendment Defined.** Contract Amendment shall mean a written amendment to this Agreement executed by TOWN and CONSULTANT after execution of this Agreement, authorizing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Contract Amendment.

4.3 **Effect of Executed Change Order.** The execution of a Contract Amendment by the TOWN and the CONSULTANT shall constitute conclusive evidence of the Consultant's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the TOWN for compensation for matters relating to or arising out of or resulting from the services included within or affected by the executed Contract Amendment.

SECTION 5. SURVIVAL OF PROVISIONS

5.1 Any terms or conditions of this Agreement that require acts beyond the expiration date of this Agreement shall survive termination of the Agreement, shall remain in full force and

effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

SECTION 6. TOWN'S RESPONSIBILITIES

6.1 **Available Information**: Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT, including contracts, maps, plans, existing studies, reports and other data pertinent to the Work if in possession of the TOWN.

6.2 **Access**: Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

SECTION 7. COMPLIANCE WITH LAW

7.1 **Compliance with Law**: The CONSULTANT shall comply with all federal, state, and local laws and ordinances applicable to the Work or payment for the Work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, or physical or mental disability in the performance of Work under this Agreement.

7.2 **Funding Requirements**: The Project is subject to Federal and State grant funding requirements including, not by limitation, specific wage and non-discrimination provisions and FHWA 1273, attached as Exhibit "C." CONSULTANT is required to comply with the same, as well as any other Federal, State or local law or regulation bearing on Federal and State funding requirements. CONSULTANT has familiarized himself with the provisions of Exhibit "C," required for federal reimbursement and shall comply in all respects with those and all applicable provisions.

SECTION 8. OWNERSHIP OF DOCUMENTS

8.1 **Ownership**: All finished or unfinished documents, including but not limited to, reports, specifications, digital files, and all other data prepared for the TOWN by CONSULTANT pursuant to this Agreement, shall become the property of the TOWN and shall be delivered to TOWN prior to final payment hereunder.

8.2 **Certification:** All documents shall be certified by CONSULTANT if and as required by FDOT or other jurisdictional agencies or governments.

8.3 **Correspondence**: CONSULTANT shall provide TOWN with a written copy of all communications by and between CONSULTANT and any governmental agencies related to this Project or the Work.

SECTION 9. RECORDS/AUDITS

9.1 **Audits**: CONSULTANT shall maintain, complete and correct records, books, documents, papers and accounts pertaining to the Work. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of three (3) years after the termination of this Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the TOWN of any fees or expenses based upon such entries. Disallowed fees shall be paid promptly when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.

9.2 **Compliance with Sunshine Law**: The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

9.3 **Non-Compliance with Section**: Refusal of the CONSULTANT to comply with the provisions of this Section 9 shall be grounds for immediate termination of this Agreement for cause by the TOWN.

SECTION 10. NO CONTINGENT FEE

10.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Agreement, without liability, and at its sole discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

SECTION 11. INDEPENDENT CONTRACTOR

11.1 The CONSULTANT is an independent contractor under this Agreement. All Work provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN. Without limitation, personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of the CONSULTANT.

SECTION 12. ASSIGNMENT; AMENDMENTS

12.1 **No Assignment**: This Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN, which may be withheld for any reason.

12.2 **Amendment**: No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

SECTION 13. INDEMNIFICATION

13.1 The CONSULTANT shall indemnify and hold harmless the TOWN and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent such liabilities, damages, losses, and costs are caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT or any persons employed or utilized by the CONSULTANT in the performance of this Agreement. The CONSULTANT'S obligations under this Section shall survive termination of this Agreement.

SECTION 14. INSURANCE

The CONSULTANT shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect the interest of the TOWN against hazards or risks of loss, as specified below. The underwriter of such insurance shall be qualified to do business in Florida, have an A.M. Best rating of B+ or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the TOWN, its officials, employees, agents and volunteers. Any insurance maintained by the TOWN shall be in excess of the CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverage's shall include a minimum of:

14.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to comply with applicable state and federal laws.

14.2 **Comprehensive Automobile and Vehicle Liability Insurance**: This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of motor vehicles or any other equipment and shall cover operations with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than $1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive that the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

14.3 **Commercial General Liability**: This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than $1,000,000.00 per occurrence, $2,000,000.00 in the aggregate, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

(b) The TOWN is to be specifically included as an Additional Insured for the liability of the TOWN resulting from operations performed by or on behalf of CONSULTANT in performance of this Agreement. CONSULTANT'S insurance, including that applicable to the TOWN as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the TOWN shall be in excess of and shall not contribute to CONSULTANT'S insurance. CONSULTANT'S insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each.

14.4 **Professional Liability**: The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than $1,000,000.00. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of this Agreement. Upon request of the TOWN, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the TOWN, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of $25,000.00 during the policy term.

14.5 **Certificate of Insurance**: Prior to the execution of this Agreement, CONSULTANT shall provide the Town Manager with Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The TOWN reserves the right to require the CONSULTANT to provide a certified copy of such policies, upon written request by the TOWN. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the TOWN before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

14.6 **Deductibles**: All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of this Agreement, to provide a bond or

other monetary consideration to cover the CONSULTANTS' deductible for Professional Liability Insurance.

SECTION 15. REPRESENTATIVE OF TOWN AND CONSULTANT

15.1 **TOWN Representative**: It is recognized that questions in the day-to-day conduct of this Agreement will arise. The TOWN designates the Town Manager, or her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

15.2 **CONSULTANT Representative**: CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

SECTION 16. COST AND ATTORNEY'S FEES/WAIVER OF JURY TRIAL

16.1 **Attorney Fees**: If either the TOWN or CONSULTANT is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs, expenses, and attorney's fees in any state or federal administrative, circuit court and appellate court proceedings.

16.2 **Waiver of Jury Trial**: In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to trial by jury.

SECTION 17. ALL PRIOR AGREEMENTS SUPERSEDED

17.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document.

SECTION 18. CONSULTANT'S RESPONSIBILITIES

18.1 **Accurate Reports**: Any reports or other documents prepared by the CONSULTANT shall be accurate, coordinated and adequate to comply with all applicable TOWN Codes, state and federal laws, and applicable rules and regulations.

18.2 **Degree of Care**: The CONSULTANT shall exercise the same degree of care, skill and diligence in the performance of the Work and all services for each this Agreement as is ordinarily provided by a professional under similar circumstances. If at any time during the term of this Agreement it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the Scope of Services of the Project, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the Work, re-perform services which failed to satisfy the foregoing standard of care, and shall pay all costs and expenses

associated with correcting said incorrect or defective Work, including, without limitation, any additional inspections, documents and reports made necessary thereby. The TOWN'S rights and remedies under this section are in addition to, and are cumulative of, any and all other rights and remedies provided by this Agreement by law, equity or otherwise.

18.3 **Survival of Provision**: The CONSULTANT'S obligations under this Section shall survive termination of this Agreement.

SECTION 19. NOTICES

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

FOR CONSULTANT:

Carnahan Proctor and Cross, Inc.
Attention: Gregory Proctor, PE, President
6101 West Atlantic Boulevard
Margate, FL 33063
Telephone: (954) 972-3959
Facsimile: (954) 972-4178

FOR TOWN:

Town of Lauderdale-By-The-Sea
Attention: Constance Hoffman, Town Manager
4501 Ocean Drive
Lauderdale-By-The-Sea, FL 33308
Phone: (954) 776-3611
Facsimile: (954) 776-1857

With a copy to:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.,
Town Attorneys
Attention: Susan Trevarthen, Esq.
200 East Broward Boulevard, Suite 1900
Ft. Lauderdale, FL 33301
Phone: (954) 763-4242
Facsimile: (954) 764-7770

SECTION 20. TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other hourly rates and costs supporting the compensation due under this Agreement are accurate, complete, and current at the time of contracting. In the event of non-compliance herewith, in addition to any other remedies available to TOWN, this Agreement's compensation shall be adjusted to exclude any sums by which the TOWN determines the Contract Price was increased due to inaccurate, incomplete, or noncurrent wage rates. All such adjustments shall be made within one year following the end of this Agreement.

SECTION 21. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida State or Federal court in any action or proceeding arising out of relating to this Agreement. Venue for any action to enforce this Agreement shall be in Broward County, Florida.

SECTION 22. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

SECTION 23. HEADINGS AND DRAFTING

Headings are for convenience of reference only and shall not be considered in any interpretation of this Agreement. CONSULTANT has had the opportunity to consult with legal counsel regarding this Agreement. Accordingly, no party shall be deemed as the drafter of this Agreement or with any advantage over the other party.

SECTION 24. EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits if not physically attached, should be treated as part of this Agreement, and are incorporated by reference.

SECTION 25. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION 26. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this Agreement on the respective dates under each signature: The TOWN, signing by and through its Town Manager, attested to by its TOWN Clerk, duly authorized to execute same and by CONSULTANT by and through its President, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

ATTEST:

Town of Lauderdale-By-The-Sea

_____
June White, CMC
Town Clerk

By: _____
Constance Hoffmann
Town Manager

Date: _____

Approved as to form and legality
for the use and reliance of the
Town of Lauderdale-By-The-Sea, only:

_____
Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
Town Attorney

ATTEST:

CONSULTANT

_____
Secretary
_____

By: _____

Title: _____

Date: _____

WITNESSES:

_____
Print Name: _____

_____
Print Name: _____

EXHIBIT "A"

SCOPE OF WORK AND DELIVERABLES

The Scope of Work includes the performance of all necessary construction, engineering, inspection and administrative services required to ensure full compliance with applicable Federal and State provision related to Local Agency Program (LAP) projects.

A. BID AND PRECONSTRUCTION PHASE SERVICES

1. Review and evaluate bid(s) for construction services.
2. Prepare written recommendation for Town Commission award.
3. Prepare agenda for and conduct preconstruction meeting, prepare and distribute meeting minutes.
4. Video tape the pre-construction conditions throughout the project limits, and provide one electronic copy to the Town.

B. CONSTRUCTION PHASE SERVICES

1. Schedule, coordinate and chair periodic meetings with the contractor, Town and other appropriate entities. Prepare and distribute minutes to attendees and Town.
2. Prepare administrative and other related forms required for submittal to FDOT and other applicable agencies.
3. Perform all required field inspections of constructed improvements/work in progress, prepare daily logs, maintain inspection and project records.
4. Provide a digital photo log or video of project activities, with heavy emphasis on potential claim items/issues and on areas of real/potential public controversy.
5. Analyze the Contractor's schedule(s) (i.e. baseline(s), revised baseline(s), updates, as-built, etc.) for compliance with the contract documents. Elements including, but not limited to, completeness, logic, durations, activity, flow, milestone dates, concurrency, resource allotment, and delays will be reviewed. Verify the schedule conforms with the construction phasing and MOT sequences, including all contract modifications. Provide a written review of the schedule identifying significant omissions, improbable or unreasonable activity durations, or errors in logic.
6. Monitor and inspect Contractor's Work Zone Traffic Control Plan and review modifications to the Work Zone Traffic Control Plan, including Alternate Work Zone Traffic Control Plan, in accordance with FDOT procedures.
7. Perform sampling and testing of component materials and completed work in accordance with the Construction Contract documents.
8. Prepare and submit to Town biweekly progress reports detailing project status including copies of daily logs. Inform the Town of any significant omissions, substitutions, defects, and deficiencies noted in the work of the Contractor and the corrective action that has been directed to be performed by the Contractor.
9. Processing of and response to contractor's submittals including, but not limited to requests for information (RFI's), shop drawings and other related project information and submittals. Inspect proposed plant materials prior to installation.

10. Review, evaluate and provide recommendations regarding contractor's payment applications including producing reports, verifying quantity calculations and field measurements to prevent delays in Contractor operations.
11. Verify the Contractor's payrolls for format classification, pay scale and timely submission. Monitor and check field interviews with payroll submittals. Notify the Contractor of incorrect classification (pay scale, etc.) Maintain filing system for payrolls and labor interviews. Maintain on-the-job training records. Verify the Contractor is providing necessary training with correct number of trainees listed for this project. Make personal contacts with trainees on the job site at least once a month. Check job site at least once a month to verify bulletin board and posters adhere to the contract requirements. Set up and maintain main files according to the EEO Contract Administration Manual. Verify that all necessary documents have been received for submission of Contractor's affidavit of payment. Ensure Contractor compliance with all project related EEO requirements as outlined in the Equal Opportunity Contract Administration. Manual.
12. Prepare correspondence to the Contractor and Town personnel with regards to any violation and/or issue of non-compliance.
13. Prepare or assist in the preparation of applications for reimbursement from State and Federal Agencies.

C. CLOSEOUT SERVICES

1. Perform substantial completion inspection of project, prepare punchlist.
2. Perform final inspection of project for final acceptance.
3. Project certification as required to FDOT and other permitting agencies as appropriate.
4. Upon completion of project, provide to Town 2 (two) electronic copies of all reports, logs, minutes, correspondence and other information, forms, and data generated for the project.

EXHIBIT "B"

COMPENSATION

FEE SUMMARY

CONTRACT DETAIL			CONSULTANT TOTALS	CONTRACT TOTAL
Carnahan, Proctor & Cross				
Labor(Unloaded)		$	31,527.67	
Overhead %	*99.56%*	$	31,388.95	
Operating Margin %	*30.00%*	$	9,458.30	
FCCM %	*1.003%*	$	316.22	
Loaded				
Premium O/T		$	-	
Expense %	*15.79%*	$	4,978.22	
Other Expense				
CONSULTANT COST:		$	77,669.36	
SUBCONSULTANTS				
Z : Z		Z		
				77,669.36

EXHIBIT B
PAGE 1 OF 2

CARNAHAN • PROCTOR • CROSS

S = Start of Contract
P = Procurement
C = Start of Construction
F = Finish (Final Estimate Completion)

FIN 418022-1-52-01 A1A Hardscape and Landscape Enhancements

FIN 418022-1-58-01			2011							2012					
			Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	Total Man Months	Total Man Hours***
Name	Company	Position	S	P	P	C						F			
Ossie Larrazabal, P.E	CPC	Project Manager												0.00	0.00
TBD	CPC	Project Administrator			0.05	0.05	0.05	0.05	0.05	0.05	0.05			0.35	57.75
TBD	CPC	Sr. Inspector / RCS/ CSS**			0.10	1.00	1.00	1.00	1.00	1.00	1.00			6.10	1006.50
		Man Month Subtotal	**0.00**	**0.00**	**0.15**	**1.05**	**1.05**	**1.05**	**1.05**	**1.05**	**1.05**	**0.00**	**0.00**	**6.45**	**1064.25**
		CONTRACT MONTHLY BILLING PERCENTAGE			**2.32**	**16.28**	**16.28**	**16.28**	**16.28**	**16.28**	**16.28**			**100.00**	

**** Overtime is projected at 10% of regular time for inspector positions only.**

***** 165 Man Hours per Man Month**

EXHIBIT B
PAGE 2 OF 2

EXHIBIT "C"

FEDERAL FUNDING REQUIREMENTS. FHWA 1273

FHWA-1273 Electronic version -- March 10, 1994

Required Contract Provisions Federal-Aid Construction Contracts

1. General
2. Nondiscrimination
3. Nonsegregated Facilities
4. Payment of Predetermined Minimum Wage
5. Statements and Payrolls
6. Record of Materials, Supplies, and Labor
7. Subletting or Assigning the Contract
8. Safety: Accident Prevention
9. False Statements Concerning Highway Projects
10. Implementation of Clean Air Act and Federal Water Pollution Control Act
11. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
12. Certification Regarding Use of Contract Funds for Lobbying

Attachments

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

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:

1. 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

2. 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.

2. **NONDISCRIMINATION**

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

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

0. 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.

1. 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:

0. 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.

1. 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.

2. 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.

3. 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.

4. 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.

0. 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.

1. 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.)

2. 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:

0. 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.

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

2. 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.

3. 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:**

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

1. 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.

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

3. 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:

0. 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.

1. 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.

2. 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.

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

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

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

1. 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.

2. 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.

0. 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.

1. 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.

3. **NONSEGREGATED FACILITIES**

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

1. 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.

2. 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).

3. 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.

4. **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:**

0. 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.

1. 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.

2. 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:**

0. 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.

1. 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.

2. 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.

3. 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

4. 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:**

0. 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.

1. 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:**

0. 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.

1. 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.

2. Helpers:

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

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

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

6. **Withholding:**

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

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers

described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

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

9. **Withholding for Unpaid Wages and Liquidated Damages:**

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

5. **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:**

0. 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.

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

trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

2. 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.

3. 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 that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

4. 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.

5. 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.

6. 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.

6. **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:

0. 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.

1. 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.

2. 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.

7. **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).

0. "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.

1. "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.

8. **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).

9. 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 that $10,000 or imprisoned not more than 5 years or both."

10. 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.

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

1. **Instructions for Certification - Primary Covered Transactions:**

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

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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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

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

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

2. 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;

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

4. 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.

11. 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)

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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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:

9. 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.

10. 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.

* * * * *

12. **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:

0. 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.

1. 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.)

4. 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:

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

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

2. 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.

5. 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.

6. 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.

7. 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.

8. 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.