

MASTER SUBCONTRACT AGREEMENT

Revised 1/15/2020

THIS MASTER SUBCONTRACT AGREEMENT (“Master Subcontract”), made this _____ day of _____, in the year 20____, by and between **Union Concrete and Construction Corp.**, a corporation organized under the laws of the State of New York, with a principal office located at 435 Meyer Road, West Seneca, New York, 14224 and a mailing address of P.O. Box 410, West Seneca, New York 14224 (hereinafter called the “Contractor”), and _____, with a principal office located at _____, and a mailing address of _____ (hereinafter called the “Subcontractor”).

WHEREAS, the Contractor is a general construction heavy/highway contractor which, from time-to-time, enters into certain contracts for the performance of construction work and/or construction services (“Prime Contracts”) with an owner or a general contractor (collectively “Owner”) with respect to a construction project (the “Project”). The Subcontractor desires to perform portions of work under one or more such contracts as a subcontractor of the Contractor. The parties desire to enter into this Master Subcontract and to confirm their agreement with respect to standard subcontract terms for Subcontractor’s performance of any work which Contractor may subcontract to Subcontractor. Contractual obligations between the Contractor and the Subcontractor as to any future work shall arise only upon the Contractor’s award of such work to the Subcontractor and only upon the Contractor’s execution and delivery of a Work Order (“Work Order”). The parties agree that the terms of this Master Subcontract shall be deemed EXPRESSLY INCORPORATED BY REFERENCE into each Work Order. Each Work Order shall further define the respective rights and obligations of the parties as to the Work to be performed by the Subcontractor, including the furnishing of all materials, tools, equipment, labor, bonds, insurances, permits, superintendence and other items (the “Work” or “Subcontractor’s Work”). In the event of any conflict between this Master Subcontract and any Work Order, the provisions of the Work Order shall prevail. In the event that the Subcontractor performs Work for the Contractor without Contractor issuing Subcontractor a Work Order for such Work, Subcontractor agrees that all terms of this Master Subcontract shall control and be applicable to the performance of such Work.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE I. FORMATION OF SUBCONTRACT

- A. When Contractor is desirous of engaging Subcontractor to perform a portion of the Work under a Prime Contract, Contractor shall issue to Subcontractor a Work Order for that portion of the Work. Upon acceptance, a Subcontract for that portion of the Work shall exist between the Contractor and the Subcontractor containing all of the terms and conditions of this Master Subcontract and the provisions of the Work Order. Any of the following shall constitute acceptance of the Work Order:
 - i. Subcontractor’s signing and returning to Contractor a copy of the Work Order;
 - ii. Subcontractor’s giving Contractor a written acceptance of the Work Order; or
 - iii. Subcontractor’s commencing performance under the Work Order whether or not signed.

- B. The Work Order shall be addressed to Subcontractor and shall contain the following information:
- i. The name of the Owner;
 - ii. The name of the Project;
 - iii. The Work to be performed by the Subcontractor;
 - iv. The amount and manner of payment to the Subcontractor;
 - v. The time of performance;
 - vi. The amount, if any, of performance bonds and payment bonds to be provided by the Subcontractor;
 - vii. Any special insurance requirements;
 - viii. Any other information or requirements specific to the Project.
- C. The parties agree that any work performed by Subcontractor for Contractor without a Work Order having been issued to Subcontractor will be subject to Articles II, V and VI of this Agreement. For all work performed by Subcontractor without a Work Order the pricing, schedule and scope of work will be as mutually agreed.
- D. The Subcontract Documents consist of **(1)** this Master Subcontract; **(2)** the Prime Contract, consisting of the Agreement between the Owner and Contractor and the other Contract Documents enumerated therein; **(3)** Modifications issued subsequent to the execution of the Agreement between the Owner and Contractor, whether before or after the execution of this Master Subcontract; **(4)** the related Work Order(s) and other documents listed therein; and **(5)** Modifications to this Master Subcontract issued after the execution of this Master Subcontract. These form the Subcontract Documents and are as fully a part of the Subcontract Documents as if attached hereto or repeated herein. The foregoing documents are hereby INCORPORATED BY REFERENCE AND ARE MADE A PART HEREOF. Subcontractor represents that it has read the Prime Contract and binds itself to the Contractor for the performance of Subcontractor's Work in the same manner as the Contractor is bound to the Owner for such performance under the Contractor's Prime Contract with the Owner. Subcontractor acknowledges that a complete set of the Subcontract Documents and any modifications after execution of this Master Subcontract are available for review upon request made to the Owner and/or the Contractor. In the event of a conflict between the Prime Contract and this Master Subcontract, this Master Subcontract shall control, together with the terms and conditions of the Prime Contract which are not in conflict.

ARTICLE II: WORK TO BE PERFORMED

- A. Subcontractor agrees, at its own sole cost and expense, to furnish and perform, without exception, all of the labor, services and management and to furnish and install all the materials, plant and equipment necessary to complete in good, substantial, workmanlike, warranted and approved manner the Work described in the applicable Work Order, as well as all other work incidental or related to it or reasonably necessary for a complete and proper Project within the time specified and in accordance with this Master Subcontract and the Subcontract Documents. Subcontractor warrants and agrees that all of Subcontractor's Work shall be performed in strict compliance with the terms and conditions of the Subcontract Documents, including all specifications and drawings therein, including change orders, addenda and modifications as made from time to time thereto. All Work shall be performed in a good and workmanlike manner and to the complete satisfaction of the Contractor and Owner, and subject to their inspection and acceptance. There shall be no substitutions of materials, or use of equivalent materials, without the express written consent of Contractor and Owner. No acceptance or purported acceptance of the Work shall be deemed to preclude any claim against the Subcontractor

for any part of the Work which is not in complete conformance with the Subcontract Documents. Should there be any conflicts between or within the Subcontract Documents which are not resolved in writing prior to issuance of the Work Order, then that which requires the highest degree of performance (quality, quantity, strength, finish, completion, complexity, cost, etc.) will be required and shall be provided at no increase in Subcontract Price or extension of Subcontract Time.

- B. The Subcontractor agrees to pay for all expenses including, but not limited to, the materials, skills, and instrumentalities used and labor provided, as per the current U.S. Dept. of Labor Prevailing Wage Rate Schedule and/or the New York State Dept. of Labor Prevailing Wage Rate Schedule, whichever is applicable (which can be found in the Prime Contract), in connection with the performance of this Master Subcontract, when and as bills or claims therefor become due. Subcontractor agrees to save and protect the Owner and the Contractor from all claims, Mechanic's liens, and/or amounts for taxes, fringes, supplements or wages due or claimed to be due to persons performing work or furnishing material on account thereof, and to furnish satisfactory evidence to the Contractor and Owner when and if required, that it has complied with the above requirements.
- C. The Subcontractor agrees to commence Work contracted within seven (7) calendar days after being notified by the Contractor to do so and to complete said Work as required by the Contractor to the satisfaction and acceptance of the Owner. Contractor may give notice to proceed orally, via email or in writing. Oral notice shall be confirmed in writing within 72 hours after oral notice has been given.
- D. The Subcontractor agrees to adequately and properly protect his Work by lights, barriers, supports, and guards, so as to avoid injury or damage to persons or property, and to be directly responsible for damages to persons and property occasioned by failure so to do. Further, the Subcontractor agrees to comply with the provisions of the Occupational Safety and Health Act of 1970, the Industrial Code Rule 23 as set forth by the N.Y.S. Dept. of Labor, the N.Y.S. Dept. of Transportation Standard Specifications and current addenda, and to participate in the overall job safety activities, and to be guided in respect to his operation by the overall Project safety program. It is the Subcontractor's sole and exclusive responsibility to call underground locating prior to start of its Work and to remain fully compliant until the completion of its Work. The Subcontractor working within the contract limits or at a facility dedicated to the contract shall have a written Project Safety and Health Plan in accordance with §107-05 Safety and Health Requirements, or shall have a copy of the Contractor's written Project Safety and Health Plan, and by this Master Subcontract confirms that all the Subcontractor's operations are adequately addressed.
- E. The Subcontractor shall comply with all Federal, State and local Laws, Social Security Laws, Unemployment Compensation Laws, Workers' Compensation Laws, Safety Laws, codes and regulations and all municipal ordinances and regulations effective in the locale where the Work is to be performed under this Subcontract, including but not limited to (when applicable) NYSDOT Standard Specifications §§ 102-11, 105-14, 105-21, 107-01, 107-05, 107-06, 108-05A.2, 108-05D. Subcontractor shall pay all fees, including permit fees required for its Work, all taxes, including sales and use taxes, and any and all other expenses connected with such compliance and all taxes imposed by the State or Federal Law for any employment insurance, pensions, old age retirement funds or any similar purpose. Subcontractor represents that even though Contractor may have its own safety manual and procedures, Subcontractor is and remains primarily liable and responsible to ensure the safety of its employees and Work on the Project and to comply with all applicable laws and regulations.
- F. The Contractor in its sole discretion may elect to purchase materials and/or supplies for the Project in connection with the Work to be performed by the Subcontractor. In that event, Subcontractor agrees that it is and shall remain obligated to review and approve any product/material specifications and/or submittals to ensure compliance with the Subcontract Documents, and that Contractor has no

obligation to do same. Subcontractor further agrees that it is and shall remain obligated to ensure that any such product/material delivered to the Project complies with the Subcontract Documents so as to ensure that the Subcontractor will meet its warranty obligations set forth in section II.A above. In the event that the product/material is defective and/or fails to comply with the Subcontract Documents, then in that event Contractor agrees that Subcontractor may prosecute supplier and/or manufacturer in Contractor's name directly against the supplier and/or manufacturer. Subcontractor agrees that the foregoing agreement by Contractor shall be Subcontractor's sole remedy as against Contractor for defective product/material procured by Contractor pursuant to this section.

ARTICLE III: PAYMENT

- A. Payment shall be made in accordance with quantities allowed on estimates by the Owner within seven (7) days after Contractor receives payment from the Owner. Before the first monthly Application for Payment is filed by Subcontractor, Subcontractor shall submit a breakdown showing the subdivision of the Subcontract Price into its various parts and including a list of names and addresses, including a contact person and telephone number, of all vendors, materialmen, suppliers and unions to which Subcontractor is bound, at any tier lower than Subcontractor (hereinafter, "sub-subcontractors") that have been or will be used in connection with the performance or completion of any part of the Work.
- B. It is the Subcontractor's sole and exclusive responsibility to review, verify and approve that the Owner's payment on account of Subcontractor's Work is made based upon the correct quantities of Work performed by Subcontractor. Contractor shall have no obligation to confirm that Owner's payment on account of Subcontractor's Work represents payment for the correct quantities of Subcontractor's Work. Subcontractor agrees to make no claim against Contractor for Subcontractor's failure to verify the quantities of its Work for which payment has been made.
- C. As a condition precedent to payment, the following is required if applicable to the Project:
- (1) Subcontractor is required to file with the Contractor all reports identified in **Exhibit A (Additional Requirements)**;
 - (2) Proof of insurance satisfactory to the Contractor;
 - (3) Completion of any paperwork required by the Owner;
 - (4) Certified Payrolls;
 - (5) Lien waivers, affidavits, warranties and guarantees in a form satisfactory to the Owner and/or Contractor or as otherwise required by the Master Subcontract Documents and/or the Prime Contract.
- D. Contractor may deduct an amount necessary to satisfy any claims, liens or judgments against a Subcontractor or materialman which have not been fully discharged. Subcontractor agrees that Contractor may, but is not required to, issue joint checks to the Subcontractor and a vendor with respect to the Project, which checks shall, at the request of the Contractor, be endorsed by the Subcontractor to the vendor for purposes of causing the vendor to be paid. In the event that the Subcontractor fails or refuses to so endorse any such joint check, the Contractor shall have the right, but not the obligation, to pay the vendor directly. All payments made hereunder shall be credited against all amounts then owed or which may thereafter become owed to the Subcontractor by the Contractor on account of the Work.
- E. If Owner holds retainage on its payments to Contractor relating to Subcontractor's Work, Contractor shall hold the same retainage on its payments to Subcontractor. Provided that Subcontractor has

submitted all required close-out documentation in a form satisfactory to Owner and/or Contractor, then final payment and/or retainage will be released to Subcontractor within seven (7) days of Contractor's receipt of said monies from Owner.

- F. If the quantities of Work allowed the Subcontractor by the Contractor are reduced by the Owner after making any partial payment, then the Contractor may deduct from any subsequent payment to the Subcontractor the amount of monies represented by the reduction in the quantities. The final amount of money to be paid the Subcontractor shall be in accordance with the final estimate of quantities in place as rendered by the Owner.
- G. Acceptance by Subcontractor of the **Final Payment** shall constitute a release of the Owner, Contractor and the Architect/Engineer from all uninsured liability for all things done or furnished in connection with the Work, and for every uninsured act or omission or neglect by the Owner, the Contractor and the Architect/Engineer relating to or arising out of the Work. The Subcontractor, before **Final Payment**, shall also execute and deliver a General Release and Waiver of all claims to the Owner, Contractor and Architect/Engineer of all liability as set forth in the preceding sentence.

ARTICLE IV: BONDS

A. If required by the Work Order:

The Subcontractor shall furnish Performance and Labor and Material Payment bonds effective for the life of this Subcontract, in an amount specified by the Contractor, conditioned upon and covering the faithful performance of, and compliance with, all the terms and provisions of the Subcontract. The Surety shall be authorized to do business in the State of New York by the New York State Department of Financial Services, rated at least A- by A.M. Best and Company or meet such other requirements as are acceptable to the Contractor and Owner. The Bonds shall be in the exact form attached hereto as **Exhibit C**. The bonds shall be for the protection of the Owner and the Contractor and all persons furnishing labor and materials in connection with the performance of the Work. And unless the Contractor expressly provides otherwise, the Subcontractor Performance and Labor and Material Payment Bonds will cover all work performed by the Subcontractor, including change orders, and any amount of the work subcontracted to a person or entity by the Subcontractor, which scope is part of the Subcontract between Contractor and Subcontractor.

ARTICLE V: INDEMNITY

- A. To the fullest extent permitted by law, Subcontractor shall indemnify, defend, save and hold harmless the Owner, Architect/Engineer, Architect/Engineer's consultants, and Contractor, and their respective shareholders, agents, partners, officers, employees, successors and assigns (hereinafter collectively "Indemnities") from and against all allegations, claims, damages, losses, liability, or expenses, including attorneys' fees, caused in whole or in part by Subcontractor, or its agents, servants, employees, sub-subcontractors or any other person for whose acts Subcontractor is liable. This indemnification includes any (i) claims for breach of this Master Subcontract; or (ii) claims for damages for bodily injury, sickness, disease, or death; or (iii) negligent act, omission, breach of statutory duty or obligation, on the part of Subcontractor or any other person; or (iv) claims for, or damages to, or the loss of use of, tangible property, of any nature whatsoever; any of which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of Work by the Subcontractor, or any accident or occurrence involving Subcontractor or Subcontractor's Work, or the use, misuse, erection, maintenance, operation or failure of any machinery or equipment

(including, but not limited to, motor vehicles, scaffolds, derricks, ladders, hoists, rigging supports, etc.) whether or not such machinery or equipment was furnished, rented or loaned with or without authorization by the Owner or the Contractor or their officers, employees, agents, servants or others, to the Subcontractor. This indemnity does not extend to that part of any claims, damages, loss, liability or expenses arising from the negligent acts or omissions of the Contractor. Subcontractor agrees to purchase and maintain such insurance as will protect it and Contractor, including contractual coverage.

- B. The foregoing indemnification includes, but is not limited to, any claims, damages, loss, liability or expense of any kind, which is in any way connected with the Work and which is based upon a breach of statutory duty or obligation on the part of the Contractor where the Contractor is not found to have committed a negligent act or omission.
- C. In any and all claims against the Contractor or any of its agents or employees, by any employee of Subcontractor, the indemnification obligations shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- D. If the foregoing indemnity is made void or otherwise impaired by any law controlling the construction thereof, such indemnity shall be deemed to conform to the fullest indemnity permitted by law. All indemnification provisions herein shall survive termination of this Master Subcontract. The indemnity provided by the requirements contained herein shall be in addition to and not in limitation upon any rights of common law indemnity.

ARTICLE VI: INSURANCE

- A. Subcontractor hereby agrees that before commencing said Work it will present to the Contractor all requested documentation evidencing Subcontractor's maintenance of the insurance coverages required by this Article. Such documentation may include, but is not limited to, Certificates of Insurance, underlying Insurance Policies and Policy Endorsements. Subcontractor shall maintain said insurance in force at all times during the performance of any Work herein provided and such insurance coverage shall be maintained for at least one year from the date of final written acceptance of the Project. Unless provided otherwise in the Work Order, Subcontractor's subcontractors shall provide the same insurances as required herein.
- B. It is understood and agreed that the insurance coverage and limits, required below, shall not limit the extent of the Subcontractor's responsibilities and liabilities specified within the Prime Contract Documents or by law.
- C. Subcontractor waives all rights against Contractor, Owner and Architect/Engineer and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability, commercial umbrella liability, business auto liability or workers compensation, pollution and employers liability insurance maintained per requirements in this section. Subcontractor shall cause its insurer to include a "waiver of subrogation" clause in or issue an endorsement to all of its insurance policies recognizing and agreeing to this provision.
- D. It is further understood and agreed that authorization is hereby granted to the Contractor to either terminate this Subcontract or withhold payments to the Subcontractor until properly executed Certificates of Insurance and other requested insurance documents providing proof of insurance as required herein are received by Contractor. All of the insurance listed below shall be written through

a company or companies satisfactory to the Contractor, which companies shall be licensed and authorized in the state where the Work is to be performed, and has an A.M. Best Rating of A-, VII or better, and the certificates shall be of the type that definitively obligate the insurer to notify the Contractor at least thirty (30) days in advance of any alterations in coverage or cancellations or non-renewal thereof. A sample of a properly executed Certificate of Insurance is attached as **Exhibit D**. Subcontractor expressly agrees and acknowledges that it is not entitled to any additional compensation from Contractor for the procuring of the insurance coverages required by this Article.

E. The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability:

a. Commercial General Liability (CGL) with limits of insurance of not less than:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products and Completed Operations
\$1,000,000 Personal and Advertising Injury
\$100,000 Property Damage Legal Liability
\$5,000 Medical Payments.

- i. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each Project.
- ii. CGL shall be written on ISO Occurrence Form CG 00 01 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.
- iii. Contractor, Owner and all other parties required of the Contractor, shall be included as insureds on the CGL, using ISO Additional Insured Endorsement CG 20 10 07 04 and CG 20 37 07 04 or endorsements providing equivalent coverage to the additional insureds. This insurance for the additional insureds shall be as broad as the coverage provided for the named insured subcontractor. It shall apply as Primary and Non-contributing Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
- iv. Subcontractor shall provide a waiver of subrogation in favor of the Owner and the Contractor, their parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees, for any claim which might arise by reason of any payment under the policies obtained by Subcontractor.
- v. Subcontractor's CGL shall not contain any exclusion for explosion, collapse or underground for Work performed. In addition, the Subcontractor's CGL shall not contain an exclusion for subsidence.
- vi. The CGL coverage shall be endorsed to include terms no less broad than ISO form CG 2274 (Limited Contractual Liability Coverage for Personal and Advertising Injury). Where required, the CGL coverage shall be endorsed to include terms no less broad than ISO form CG 2417 (Contractual Liability – Railroads).

- vii. Subcontractor shall maintain CGL coverage for itself and all additional insureds for the duration of the Project and maintain Completed Operations coverage for itself and each additional insured for at least three (3) years after completion of the Work.

b. Automobile Liability:

- i. Business Auto Liability with limits of at least \$1,000,000 each accident.
- ii. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
- iii. Contractor, Owner and all other parties required of the Contractor, shall be included as insureds on the auto policy.
- iv. Contractor, Owner and all other parties required of the Contractor, shall be included as additional insureds.
- v. Coverage for additional insureds shall be provided on a primary and non-contributory basis before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured.
- vi. Subcontractor shall provide a waiver of subrogation in favor of the Owner and the Contractor, their parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees, for any claim which might arise by reason of any payment under the policies obtained by Subcontractor.
- vii. If Subcontractor or its sub-subcontractors of any tier haul or otherwise transport Hazardous Materials, the broadened pollution liability coverage endorsement (CA 99 48) and MCS 90 endorsement shall be provided.

c. Commercial Umbrella:

- i. Umbrella limits must be at least:
 - \$5,000,000 Each Occurrence
 - \$5,000,000 Products Completed Operations
 - \$5,000,000 Policy Aggregate
- ii. Umbrella coverage must include as insureds all entities that are additional insureds on the CGL, Automobile Liability and Employers Liability. Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured other than the CGL, Auto Liability and Employers Liability coverages maintained by the Subcontractor.
- iii. Subcontractor shall provide a waiver of subrogation in favor of the Owner and the Contractor, their parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees, for any claim which might arise by reason of any payment under the policies obtained by Subcontractor.

d. Workers' Compensation and Employers Liability:

- i. Employers Liability Insurance limits of at least \$500,000 each accident for bodily injury by accident and \$500,000 each employee for injury by disease.
 - ii. Where applicable, U.S. Longshore and Harbor Workers' Compensation Act (USL&H) Endorsement shall be attached to the policy.
 - iii. Subcontractor shall provide a waiver of subrogation in favor of the Owner and the Contractors, their parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees, for any claim which might arise by reason of any payment under the policies obtained by Subcontractor.
- e. Contractual Liability - coverage shall be obtained providing contractual liability insurance covering the Subcontractor's obligations under this Subcontract as identified in Article 5.**
- f. Protection & Indemnity Insurance – coverage shall be obtained *IF* Subcontractor operates, or anticipates operating, marine vessels or barges during the completion of its Scope of Work.**
- i. This Protection & Indemnity Insurance must cover loss of life, personal medical and repatriation expenses, property loss or damage with limits not less than \$1,000,000 Per Loss and Per Vessel and \$2,000,000 Aggregate Limit.
 - ii. This policy must include a Waiver of Subrogation in favor of Contractor and Owner their parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees, for any claim which might arise by reason of any payment under this policy obtained by Subcontractor.
 - iii. This policy shall be endorsed to designate Owner and the Contractor, their parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees as an additional insured and provide that such insurance is primary as respects the interests of the Contractor and that any insurance maintained by the contractor is excess.
- g. If required by the Work Order:**

(1) Contractors Protective Liability Insurance (OCP) - The Subcontractor shall also take out, pay for and maintain until completion and acceptance of the Work required by this Master Subcontract, a separate policy of insurance naming the Contractor as the sole insured. The original policy shall be submitted for retention by the Contractor. The coverage shall be provided for the Contractor, its officers and employees with respect to said Work. Said policy shall provide that the coverage afforded thereby shall be primary coverage to the full limits of liability stated in the declarations and if the Contractor, its officers and employees have other insurance against the loss covered by said policy, that other insurance shall be excess insurance only. The amount and form of coverage shall be specified in the Work Order.

(2) Contractors Pollution Legal Liability Insurance – To provide coverage for liability due to personal injury or property arising out of or in connection with work

contemplated by the contract herein specifically, Subcontractor shall provide coverage for pollution claims that typically are excluded under standard Commercial General Liability coverage forms and shall include coverage for pollution costs incurred as a result of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants arising out or in connection with the work contemplated by the contract herein. Pollution costs means any cost or expense arising out of any request, demand or order that the contractor test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of pollutants; or any claim or suit by or on behalf of a governmental authority demanding that the contractor test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of pollutants. Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. The amount of coverage shall be specified in the work order.

- i. Coverage shall include Transportation and Non-owned Disposal Sites.
- ii. This policy shall be endorsed to designate Contractor. as additional insured and provide that such insurance is primary as respects the interests of the contractor and that any insurance maintained by the contractor is excess. Said insurance shall be on an occurrence form basis only. Claims made insurance shall not be acceptable. Deductibles on said insurance, if any, shall be the sole responsibility of the subcontractor.
- iii. Subcontractor shall provide a waiver of subrogation in favor of the Owner and the Contractor, their parents, subsidiaries, associated or affiliated companies, their officers, directors, stockholders, agents and employees, for any claim which might arise by reason of any payment under the policies obtained by Subcontractor.

(3) Marine Insurance - If required by the Work Order, the Subcontractor shall provide coverage for liability due to personal injury or property arising out of or in connection with the Work contemplated by the Master Subcontract herein. Specifically, coverage shall be provided for marine activities that typically are excluded under standard Commercial General Liability coverage forms and shall include coverage for marine accidents/omissions/errors in a form and amount satisfactory to the Contractor and the Owner as specified in the Work Order

(4) Professional Liability Insurance - If required by the Work Order, the Subcontractor shall maintain Professional Liability Coverage. Specifically, coverage shall be provided for errors, omissions and/or malpractice of Subcontractor, and any other party for which it is liable, in connection with the performance of Subcontractor's work under this Agreement. Such insurance will have a minimum limit as outlined in the work order. Subcontractor shall maintain in full force and effect such Professional Liability Insurance as described herein for at least five years following the final acceptance of Subcontractor's work.

ARTICLE VII: CLAIMS AND DELAYS

- A. The Subcontractor agrees to perform and coordinate his Work with that of the Contractor and other Subcontractors to the best interest of the Work as a whole, as determined by the Contractor.
- B. If the Work of the Subcontractor is delayed, disrupted, interfered with, or suspended without its fault and for causes which would entitle the Contractor to extensions of time as provided in the Prime Contract, Subcontractor agrees to give written notice to Contractor of the nature and cause of any such delays, disruptions, interferences, or suspensions within five (5) calendar days or sooner if necessary to enable the Contractor to present a claim to the Owner or to request an extension of time in accordance with the provisions of the Prime Contract. Any claim by the Subcontractor for an extension of time not so made shall be waived and the Subcontractor shall not be entitled to any extension of time as a result thereof.
- C. The Contractor shall not be liable to the Subcontractor for any costs, damages or expenses caused by or related to delays, disruptions, interferences, or suspensions in Subcontractor's performance (hereinafter "delay damages") whether said delay damages are caused by the Contractor, by the Owner, by other contractors or professionals or others employed by the Owner, by any of the Contractor's other subcontractors, by strikes, material shortages, floods, fires, by weather conditions, by Acts of God, or by any other cause whatsoever, unless (a) Owner acknowledges in writing that any such delay damages will be paid for and compensated by the Owner, and (b) Owner certifies in writing the amount to be paid for any such delay damages. In all events, Subcontractor agrees that Contractor will be liable to pay Subcontractor only in the amount and to the extent that Contractor has been paid for said delay damages by Owner.
- D. The Subcontractor agrees that no claim for additional services rendered or materials furnished by the Subcontractor to the Contractor shall be valid unless written notice is given to the Contractor prior to the furnishing of the services or materials and unless written notice of the claim therefor is given by the Subcontractor to the Contractor not later than five (5) calendar days following the day on which the claim originated or became apparent, with the amount of the claim to be given in writing by the Subcontractor as soon as practicable. Any claim by the Subcontractor for extra compensation not so made shall be waived and the Subcontractor shall not be entitled to any extra compensation as a result thereof. Subcontractor further acknowledges that Contractor's liability is limited to the amount approved and paid for by the Owner.

ARTICLE VIII: REMEDIES—DEFAULT/TERMINATION

- A. The Subcontractor shall pay the Contractor for any and all costs, expenses and attorneys' fees which Contractor may suffer, incur or become liable for by reason of the Subcontractor's failure to carry out the provisions of this Master Subcontract or as a result of the Contractor's enforcing, or attempting to enforce, the terms and provisions of this Master Subcontract.
- B. The Subcontractor agrees to pay all royalties and license fees, and further agrees to defend all suits or claims for infringement of any patent rights involved in the Work of the Subcontractor under this Master Subcontract. Subcontractor further agrees to indemnify, defend and save harmless the Contractor and Owner from all costs, damages, penalties, legal expenses and attorneys' fees which arise by reason of the Subcontractor's infringement and/or failure to discharge its duties herein.

- C. The Subcontractor shall be liable to the Contractor for liquidated damages, not as a penalty, to the same extent as the Contractor shall be liable to the Owner under the Prime Contract Documents. Liquidated damages, when assessed, shall not exceed the Subcontractor's proportionate share of the responsibility for such liquidated damages. This provision does not preclude any claim the Contractor may have for direct damages under this Master Subcontract or the law. This paragraph shall survive any abandonment by the Subcontractor or termination of this Master Subcontract.
- D. In the event that the Owner and/or Contractor determine that Subcontractor has failed to maintain the Project schedule, and the Owner has refused or denied an extension of time or an extension is otherwise unavailable, then Subcontractor shall at its own cost, provide such labor and materials as necessary to meet the Project schedule. If Subcontractor fails to supply such labor or materials which, in Contractor's sole judgment, are sufficient to meet the Project schedule, then Contractor shall have the right, in addition to other rights set forth herein, to supply such labor or materials as Contractor deems necessary to meet all scheduled dates. Subcontractor agrees to pay all costs so incurred by Contractor plus a markup of 10% for overhead and profit and agrees that Contractor may withhold such monies from Subcontractor's progress payments.
- E. If notification of any claims has been made against the Subcontractor or the Contractor arising out of labor or materials furnished under this Master Subcontract, or otherwise on account of any actions or failures to act by the Subcontractor in the performance of this Master Subcontract, then upon three (3) days' written notice to Subcontractor, Contractor shall have the right to rectify any such claims and/or withhold such amounts otherwise due or to become due hereunder in order to cover said claims and any costs or expenses arising in connection therewith. This right of the Contractor shall not be exclusive of any other rights of the Contractor herein or provided by law.
- F. Within 48 hours after receipt of Contractor's written request, Subcontractor hereby agrees to provide Contractor with a written assurance of future performance including reasonable documentation as to Subcontractor's financial condition, including its ability to pay its bills and complete the Work on time, including resource-loaded look-ahead schedules; and, Subcontractor's failure to provide such assurance of performance shall be cause for the Contractor to terminate this Subcontract. If so requested by Contractor, Subcontractor shall also provide the names of its banks or lenders and written confirmation that Subcontractor is not in default of any of its loans or bank covenants.
- G. In case the Subcontractor shall fail to correct, replace and/or re-execute faulty or defective Work done and/or materials furnished under this Master Subcontract within 48 hours after written notice from the Contractor, the Contractor shall have the right to (i) correct, replace and/or re-execute such faulty or defective Work, or (ii) to terminate the Subcontractor as set forth below in subsection I, and in either case, to charge the cost thereof to the Subcontractor, together with any damages caused by a delay in the performance of this Master Subcontract.
- H. In an emergency affecting safety of persons or property, or to mitigate substantial economic harm or delays to the Project schedule as determined by the Contractor, the Contractor, in its sole discretion, shall have the right to act in lieu of Subcontractor without advance notice to Subcontractor in order to prevent such threatened damage, injury or loss. Additional compensation claimed by the Contractor on account of an emergency shall be charged against the Subcontractor in accordance with subsections D and G above.
- I. If the Contractor has cause for determining that Subcontractor has failed to satisfy any problems with its Work, failed to supply adequate men and equipment, failed to remedy any contractual deficiencies,

failed to make payment to subcontractors, suppliers and/or employees, has disregarded applicable laws, statutes, ordinances, codes, rules and regulations, failed to remove any safety hazard, or failed to provide an acceptable assurance of performance, or otherwise is guilty of a substantial breach of the Subcontract Documents, then without prejudice to any other rights or remedies, and upon giving Subcontractor three (3) days' written notice, the Contractor shall have the right to either terminate this Master Subcontract, in whole or in part, for cause or take whatever steps it deems necessary to correct said deficiencies and charge the cost thereof to Subcontractor, who shall be liable for payment of same, including costs for administration, overhead and attorneys' fees.

- J. In case of default on the part of the Subcontractor under the terms of this Master Subcontract, the Contractor shall be entitled to take possession of all materials and equipment of the Subcontractor and to complete the Work covered by the terms of this Master Subcontract. Subcontractor agrees to assign and deliver to Contractor all material orders and any other contracts related to the Work and the Project. If the unpaid balance otherwise due and payable to Subcontractor shall exceed the costs of completing the Work, which costs include additional inspection services, supplemental subcontracts, 10% for the Contractor's supervision and overhead, reasonable attorneys' fees, costs, and any liquidated damages or actual damages for delays, such excess shall be paid to the Subcontractor. If such costs exceed the unpaid balance, Subcontractor and its surety shall be liable to Contractor for the excess, and shall reimburse Contractor for such excess within twenty (20) days following written notice.

ARTICLE IX: RELATIONSHIP OF PARTIES

- A. It is declared to be the express intention of each of the parties that the relationship created between them by this Master Subcontract be that of an independent contractor retained by Contractor to provide the services called for herein.
- B. An agent or employee of Subcontractor shall never be deemed to be the employee or agent of Contractor. In this connection, Subcontractor shall have the sole right to hire and fire all of its employees, and shall exercise all control, direction, and supervision over them with respect to the physical details of the Work to be performed and the manner in which the Work is performed.
- C. Contractor shall not have the right to exercise any control, direction, or supervision over the completion of Subcontractor's Work, as identified in the Work Order and/or in Article II, except as to insistence on the ultimate satisfactory and timely completion of said Work. In addition, Contractor retains the right to direct the overall schedule of Subcontractor. This solely includes the identification of start and stop dates, locations of areas where Work is performed, setting completion deadlines, coordination with other subcontractors, directing overall phasing of the Subcontractor's Work and the shifts operated.

ARTICLE X: MISCELLANEOUS

- A. This Master Subcontract shall remain in effect unless and until: (1) either party gives written notice to terminate on thirty (30) days' advance notice; or, (2) this Master Subcontract is amended and/or superseded by written notice. Notwithstanding the foregoing, any notice of termination shall not be effective as to any open Projects absent written agreement signed by both parties to this Master Subcontract. In addition, notwithstanding the foregoing, the following clauses shall survive

termination of this Master Subcontract: [*Articles V and VIII(c); and all insurance provisions in Article VI requiring coverage for a time period beyond the completion/termination of the Work*]).

- B. Neither this Master Subcontract nor any interest herein nor claim hereunder, nor any part of any of the foregoing, shall be assigned, subletted or transferred by Subcontractor except as expressly authorized in advance and in writing by Contractor. Any attempt at unauthorized assignment, subletting, or transfer by Subcontractor shall constitute a material breach of this Master Subcontract.
- C. All notices shall be delivered in one of the following ways: certified mail, return receipt requested; telefax; email; or hand-delivery. Notices shall be sent to the Subcontractor at the address on the Master Subcontract or to such other locations where Subcontractor is or does business as provided in the Work Order.
- D. The Subcontractor agrees to be bound by all labor agreements and commitments which have been or may be entered into by the Contractor during the entire length of this Subcontract and the Prime Contract, provided however, that nothing in this paragraph shall be construed to require or authorize any party to take any action which shall be in violation of the laws of the United States or of the State of Performance under this Master Subcontract.
- E. The Subcontractor agrees to the provisions of all exhibits for the duration of the performance of this Master Subcontract.
- F. The Subcontractor hereby guarantees its Work against all defects of material and workmanship as called for in the Prime Contract and the plans, specifications and addenda, or if no guarantee is called for, then for a period of one (1) year from the dates of partial or total acceptance, as the case may be, of the Subcontractor's Work by the Owner. Subcontractor agrees to satisfy and make good the said defects without cost to Owner or Contractor.
- G. This Master Subcontract contains the entire agreement among the Parties with respect to the subject matter of this Master Subcontract, and supersedes each course of conduct previously pursued or acquiesced in, and each oral agreement and representation previously made, by the Parties with respect thereto, whether or not relied or acted upon. In the event of any conflict between this Master Subcontract and the Subcontractor's quote or proposal, this Master Subcontract shall control. No course of performance or other conduct subsequently pursued or acquiesced in, and no oral agreement or representation subsequently made, by the Parties, whether or not relied or acted upon, and no usage of trade, whether or not relied or acted upon, shall amend this Master Subcontract or impair or otherwise affect any Party's obligations pursuant to this Master Subcontract or any rights and remedies of a Party pursuant to this Master Subcontract. No amendment to this Master Subcontract shall be effective unless made in writing duly executed by all Parties and specifically referring to each provision of this Master Subcontract being amended.
- H. No failure of Contractor to exercise, and no delay by Contractor in exercising, any right or remedy under this Master Subcontract shall constitute a waiver of such right or remedy. No waiver by Contractor of any such right or remedy under this Master Subcontract shall be effective unless made in a writing duly executed by Contractor and specifically referring to each such right or remedy being waived.
- I. Except as otherwise provided herein, no provision of this Master Subcontract shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a

third-party beneficiary of this Master Subcontract or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.

- J. The illegality, unenforceability, or non-applicability of any provision hereof shall not affect the remaining provisions of this Master Subcontract, but such remaining provisions shall be construed as though such illegal, unenforceable or non-applicable provisions had not been included herein.
- K. The Subcontractor shall indemnify the Contractor and reimburse the Contractor for all fees, costs and disbursements incurred by the Contractor in the enforcement of this Master Subcontract, including Contractor's reasonable legal fees and disbursements through all trial and appellate proceedings.
- L. Contractor, in its sole and absolute discretion, shall have the right at any time to terminate for its convenience the Subcontractor's right to proceed with the Work in whole or in part upon 24 hours' written notice. Upon receipt of such a notice, Subcontractor shall stop the Work. If this Master Subcontract is terminated for Contractor's convenience, Contractor shall pay to Subcontractor the reasonable and properly documented costs for the Work which has been satisfactorily completed, for materials, supplies and equipment fabricated, incorporated or installed in the Work, including its profit and overhead for completed Work. In no event shall Subcontractor be entitled to payment of anticipated profits or overhead on work not performed or materials or equipment not furnished. In addition, if it is determined that Contractor did not properly terminate for cause/default the Subcontractor's right to proceed with the Work, then such shall be deemed a termination for convenience.
- M. When materials or equipment are acquired for a specific Federal-aid construction contract and oceanic shipments or shipments across the Great Lakes are necessary, then the Subcontractor agrees:
 - a. To utilize privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Master Subcontract, to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
 - b. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on board' commercial ocean bill-of-lading in English for each shipment of cargo described in subparagraph (a) above to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration ("MARAD"), Washington, DC 20590. MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the Subcontractor.
 - c. To insert the substance of the provisions of this clause in all Work Orders issued pursuant to this Master Subcontract.
- N. If Contractor's Prime Contract is terminated by Owner, either for cause or for convenience or otherwise, and if Owner requests or requires Subcontractor to complete the performance of this Master

Subcontract, then Subcontractor agrees that the Subcontract Price is the total amount that it will bill, claim or collect from Owner, less all amounts paid by Contractor to Subcontractor under this Master Subcontract. It is the parties' intention, and it is therefore agreed, that the Subcontract Price is the total amount that Subcontractor will request, bill for, claim or receive from any person for the performance of the Work required by this Master Subcontract.

- O. Subcontractor is **STRICTLY PROHIBITED** from having its own subcontractors absent *advance written consent from the Contractor*. If Subcontractor hires a third party in violation of this clause, it will be strictly liable for the acts and work of the third party and all damages, claims, costs, expenses, and attorneys' fees incurred by Contractor as a result of Subcontractor's breach of this clause.
- P. In the event that Contractor determines that Subcontractor's subcontractor(s) has caused damage to Contractor, and/or the Project for which Contractor may be liable, then in that event and at Contractor's sole election, Subcontractor does hereby consent to Contractor's prosecution of its claims in Subcontractor's name directly against Subcontractor's subcontractor(s). Subcontractor agrees to include this clause in any contract with its subcontractors.
- Q. If the Prime Contract is a Federal Aid project, Subcontractor agrees to all of the provisions listed in form FHWA 1273 attached to this Master Subcontract as **Exhibit B**.
- R. This Master Subcontract shall be governed by, and interpreted and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of law. Venue shall be in the County of Erie, State of New York.

IN WITNESS WHEREOF, the Contractor and Subcontractor have hereunto set their hands and seals in duplicate the day and year first above written.

UNION CONCRETE AND CONSTRUCTION CORP.

In Presence of:

By: _____

Name: _____

Title: _____

Subcontractor

In Presence of:

By: _____

Name: _____

Title: _____

List of Exhibits

Exhibit A: Additional Requirements

Exhibit B: FHWA 1273

Exhibit C: Payment and Performance Bond forms

Exhibit D: Sample Certificate of Insurance

EXHIBIT A

ADDITIONAL REQUIREMENTS

Pertaining to Article III(C) of Master Subcontract dated _____, _____, between

Union Concrete and Construction Corp. and

The Subcontractor shall comply with the following:

- A. The Subcontractor will include the provisions of this **Exhibit A** in every subcontract or purchase order unless exempted by rules, regulations, or executive orders, so that such provisions will be binding upon each Subcontractor or Vendor. The Subcontractor will take such action with respect to any subcontract or purchase order as the NYSDOT or FHWA or the Contracting Agency may direct as a means of enforcing such provision, including sanctions for non-compliance; provided, however, that in the event the Subcontractor becomes involved in, or is threatened with, litigation with a Subcontractor or Vendor as a result of such direction, the Subcontractor may request the NYSDOT or the United States or the Contracting Agency, as applicable, to enter into such litigation to protect the interests of the NYSDOT, the United States or the Contracting Agency, respectively.
- B. The Subcontractor shall develop and implement an EEO policy in accordance with Form FHWA 1273 *Required Contract Provisions Federal-Aid Construction Contracts* for Federal-Aid contracts and in accordance with § 102-08 *Standard Clauses for All New York State Contracts* for non Federal-Aid contracts.
 - a) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
 - b) To the extent required by Article 15 of the Executive Law and all other State and Federal statutory and constitutional non-discrimination provisions, the Subcontractor shall not discriminate against any employee or applicant for employment because of military status; predisposing genetic characteristics, marital status, familial status, or domestic violence victim status; and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.
 - c) Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subcontractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this non-discrimination clause.

- d) The Subcontractor shall state in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, military status, disability, predisposing genetic characteristics, marital status, or domestic violence victim status.
- e) The Subcontractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subcontractor's legal duty to furnish information.
- f) The Subcontractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Subcontractor's commitments to equal employment opportunities, under the Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- g) The Subcontractor shall comply with all provisions of Federal Executive Order 11246, and of the rules, regulations, and relevant orders of the U.S. Secretary of Labor.
- h) The Subcontractor shall furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the U.S. Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Department and the U.S. Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- i) In the event of the Subcontractor's non-compliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, or by rule, regulation, or order of the U.S. Secretary of Labor, or as otherwise provided by law.
- j) The Subcontractor shall include the provisions of § 102-11C *Equal Opportunity Clause* in every sub-subcontract or purchase order, unless exempted by rules, regulations, or orders of the U.S. Secretary of Labor issued pursuant to section 104 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. The Subcontractor shall take such action with respect to any sub-subcontract or purchase order as may be directed by the U.S. Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Subcontractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the

Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

- C. During the performance of this contract, the Subcontractor, for itself, its assignees, and successors in interest (herein referred to as the “Subcontractor”) agrees as follows:
- a) The Subcontractor shall comply with the Regulation relative to nondiscrimination in federally-assisted programs of the Department of Transportation of the United States 49 Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the “Regulations”), which are herein incorporated by reference and made a part of this contract.
 - b) The Subcontractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, and disability/handicap, or income status in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The Subcontractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the contract covers a program set forth in 49 CFR 21 Appendix B.
 - c) In all solicitations either by competitive bidding or negotiation made by the Subcontractor for work to be performed under a sub-subcontract, including procurements of materials or leases of equipment, each potential Sub-Subcontractor or supplier shall be notified by the Subcontractor of the Subcontractor's obligations under this contract and 49 CFR 21 relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
 - d) The Subcontractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the Subcontractor shall so certify to NYSDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
 - e) In the event of the Subcontractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to: (a) withholding of payments to the Subcontractor under the contract until the contractor complies, and or (b) cancellation, termination or suspension of the contract, in whole or in part.
 - f) The Subcontractor shall include the provisions of paragraphs (i) through (vi) in every sub-subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.
- D. The Subcontractor shall take such action with respect to any sub-subcontract or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance, provided, however, that in the event a Subcontractor becomes involved in, or is threatened with, litigation by a subcontractor or supplier as a result of such direction, the Subcontractor may request NYSDOT to enter into such litigation to protect the interests of

NYSDOT; and, in addition, the Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

- E. New York Labor Law §220-h requires: “The advertised specifications for every contract for the construction, reconstruction, maintenance and/or repair of public work to which the state or a municipality is a party, where the total cost of all work to be performed under the contract is at least two hundred fifty thousand dollars, shall contain a provision requiring that all laborers, workers, and mechanics employed in the performance of the contract on the public work site, either by the contractor, sub-contractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, shall be certified prior to performing any work on the project as having successfully completed a course in construction safety and health approved by the United States department of labor’s occupational safety and health administration that is at least ten hours in duration.” Effective Date: July 18, 2008.
- F. The Subcontractor will file the following reports to the attention of the Contractor’s E.E.O. Officer within the time frame indicated.

- Form No. WH-347 Payroll Report.
- Form No. WH-347 Reverse, Certificate of Compliance, Weekly.
- Form No. AAP 33 Employment Utilization Report, monthly by 3rd of month.
- Form No. PR1391 Federal EEO Report-month of July and 1st week workforce buildup, Utilizing Equitable Business Opportunity Solution (EBO) Management System.
- Form No. OSHA 10-Hr. Course Card for each employee on a certified payroll.
- Form No. Certificate of Insurance, naming Union Concrete and Construction Corp. as additional insured, mailed directly from your insurance agent.

- G. In the event that Subcontractor fails to file the aforementioned forms and or any required material certifications in a timely manner, Contractor will deduct 1-1/2% interest per month on the funds being withheld from monies due to the Subcontractor until such forms are provided.

The above mentioned forms acknowledged by _____

EXHIBIT B

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

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

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

ATTACHMENTS

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

I. GENERAL

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23

U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. NONSEGREGATED FACILITIES

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

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

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

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

Contracting agencies may elect to apply these requirements to other projects.

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

1. Minimum wages

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

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

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

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

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

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

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

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

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

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

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

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

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

2. Withholding

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

3. Payrolls and basic records

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

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

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

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

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

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

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

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

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

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

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

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

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

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

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

b. Trainees (programs of the USDOL).

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

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

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

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

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

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

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

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

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

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

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

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and

- 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

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

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

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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

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

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

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

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

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

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Instructions for Certification – First Tier Participants:

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

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

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

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

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

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered

Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered

Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

2. Instructions for Certification - Lower Tier Participants:

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

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

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

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

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

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

Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

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

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

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

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

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

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

* * * * *

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

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

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

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

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

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

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

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

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31

U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

ATTACHMENT A to FHWA 1273 - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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

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

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

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

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

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

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

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

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

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

EXHIBIT C
FORM OF SUBCONTRACTOR PERFORMANCE BOND

And

FORM OF SUBCONTRACTOR LABOR AND MATERIAL PAYMENT BOND

SUBCONTRACT PERFORMANCE BOND

Bond No.:

KNOW ALL BY THESE PRESENTS: That [name of subcontractor], a [state] corporation, as Principal, hereinafter called Principal, and [name of surety], a [state] corporation, as Surety, hereinafter called Surety, are held and firmly bound unto [name of contractor], as Obligee, hereinafter called Obligee, in the amount of U.S. Dollars (\$) (the "Penal Sum"), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated entered into a subcontract number with Obligee for the performance of subcontract work , including warranty obligations, in accordance with drawings and specifications for the construction of the project (hereinafter "the Project"), which subcontract is by reference made a part hereof, and is hereinafter referred to as the "Subcontract".

A. NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if Principal shall promptly and faithfully perform said Subcontract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions: (i) Principal is in default under the Subcontract; and (ii) Principal has been declared by Obligee to be in default under the Subcontract; and (iii) the Obligee has performed its obligations under the Subcontract. Upon the occurrence of each of the above conditions, Surety shall have 30 days ("Investigatory Period") from the last event to occur of the following: (a) receipt of the written notice of default; (b) the date access to the Project site is provided to Surety; or (c) the date the information and documentation in Obligee's or its agent's possession and requested by Surety is received by the Surety, which information and documentation must be requested by Surety within 10 days of its receipt of Obligee's written notice of default, to:

- (1) Notify Obligee that it has elected to complete the Subcontract through independent contractor(s) retained by Surety and thereafter commence such performance with reasonable promptness. In such event, that portion of the Balance of the Subcontract Price as may be required to complete the Subcontract or remedy the default and to reimburse the Surety for its expenditures shall be paid to the Surety at the times and in the manner as said sums would have been payable to Principal had there been no default under the Subcontract; or
- (2) Notify the Obligee that it has elected to arrange for a subcontract between Obligee and a replacement subcontractor reasonably acceptable to Obligee guaranteed by subcontract performance and payment bonds provided by the replacement subcontractor in the amount of the replacement subcontract. In such event, Surety shall pay Obligee the difference between the cost of the replacement subcontractor and the amount that would have been payable to the Principal had there been no default under the Subcontract. Such payments may be in a lump sum (in the case of a lump sum subcontract) or periodically as incurred by Obligee; or
- (3) Request that Obligee complete the Subcontract. In such event, Surety shall pay Obligee the difference between the reasonable cost of a replacement subcontractor and the amount that would have been payable to the Principal had there been no default under the Subcontract; or
- (4) Arrange to provide financial and/or other assistance to the Principal ("Financing") to assist the Principal with completion of the Subcontract. In the event Obligee has formally terminated Principal's right to proceed under the Subcontract, this option shall be subject to Obligee's concurrence, which shall not be unreasonably withheld. The Obligee shall pay the

- Balance of the Subcontract Price as directed by the Surety. In the event Surety provides Financing, Surety, in its sole discretion, may upon written notice to Obligees cease providing such Financing at any time, in which event Surety shall immediately make a further election without a further Investigatory Period under this paragraph A; or
- (5) Deny liability and notify the Obligees, citing the reasons therefor; or
 - (6) After investigation, determine the amount for which it may be liable to the Obligees and, as soon as practicable after the amount is determined, make payment to the Obligees.
- B. After Obligees has provided Surety with written notice of the Principal's default, and during the Investigatory Period and any subsequent period before the commencement of work under paragraph A, subparagraphs 1 or 2, Obligees may take action pursuant to its Subcontract rights to mitigate the damages caused by the Principal's default. To the extent that Obligees performs obligations under the Subcontract during this period (the "Mitigation Work") Obligees shall be entitled to deduct the Cost of the Mitigation Work from the Balance of the Subcontract Price. To the extent the Balance of the Subcontract Price is exhausted, and Surety elects to proceed under paragraph A, subparagraphs 1, 2, 3 or 4, Surety shall reimburse Obligees for the difference between the Balance of the Subcontract Price and the Cost of the Mitigation Work incurred and paid by Obligees.
- C. If Surety proceeds under paragraph A, subparagraphs 1, 2, 3, 4 or 6, Surety may additionally advise in its notice of its election to Obligees that the Obligees's claim is disputed as to liability and/or amount and Surety is proceeding under a reservation of all rights and defenses. In that event, Surety shall make all payments otherwise called for under this Bond. However, in the event it is determined that Surety is not liable, in whole or in part, under this Bond and Surety expended monies in excess of the funds paid by Obligees to Surety, then Surety shall be entitled to recover the excess from Obligees.
- D. The Surety's aggregate liability is limited to the Penal Sum of this Bond, regardless of whether the liability arises from the actions or failure to act of Principal or Surety. All amounts expended by the Surety under paragraphs A and/or B and/or C of this Bond, in excess of funds paid by Obligees to Surety, shall be credited against the Penal Sum. However, in the event it is determined that Surety expended monies in excess of the Penal Sum of this Bond, then Surety shall be entitled to recover the excess from Obligees. The Penal Sum of this Bond shall automatically be increased or decreased by the amount of any change order, provided the change order(s) do not, either singly or in the aggregate, exceed 10% of the original Subcontract amount. Should any change order singly or in the aggregate exceed 10% of the original Subcontract amount, Surety's written consent must be obtained by Obligees in order to increase the penal sum.
- E. Definitions:
- (1) The term "Balance of the Subcontract Price," as used in this Bond, shall mean the total amount payable by Obligees to Principal under the Subcontract and any amendments thereto, less the amounts heretofore properly paid by Obligees under the Subcontract.
 - (2) The term "Cost of the Mitigation Work" means the cost actually incurred by Obligees in proper performance of work under the Subcontract, including remedying defects in the work of the Principal. Such costs shall be at rates and hours not higher than the standard customarily incurred at the place of the Project except with the prior written consent of the Surety. Obligees's overhead (both field and home office) as well as profit shall be included in the Cost of the Mitigation Work at a markup of 15% to the actual labor, material, equipment, and subcontractor costs incurred and paid for by Obligees. Obligees shall not apply markup to the cost of any subcontractor that is affiliated with Obligees.
- F. Notwithstanding any provision in this Bond and any document incorporated herein to the contrary, any proceeding, legal or equitable, under this Bond must be instituted in a court of

competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of default or within two years after the Principal ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

- G. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Obligee named herein or the heirs, executors, administrators or successors of the Obligee.
- H. Any notice given or any demand made under this Bond shall be given in writing and may be provided to the following email address _____ or given by any method of delivery that provides evidence or confirmation of receipt, including personal delivery, express courier (such as Federal Express), and prepaid certified or registered mail with return receipt requested. The Surety's address for notice is _____.
- I. The Surety shall not be liable to the Obligee or others for obligations of the Principal that are unrelated to the Subcontract work, and the Balance of the Subcontract Price shall not be reduced or set off on account of any such unrelated obligations.
- J. The Surety hereby waives notice of change, including changes of time, to the Subcontract, purchase orders or other obligations.

Signed this _____ day of _____, _____.

(Principal)

By: _____

(Surety)

By: _____
_____, Attorney-in-Fact

SUBCONTRACTOR PAYMENT BOND

Bond No.:

KNOW ALL BY THESE PRESENTS, That we, (subcontractor's name), called the Principal, and (surety's name), a (state) corporation, called the Surety, are held and firmly bound unto (Here insert the name and address, or legal title of the General Contractor), hereinafter called the Obligee, in the sum of U.S. Dollars (\$) (the "Penal Sum"), for the payment whereof said Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.

WHEREAS, the Principal has entered into a subcontract numbered with the Obligee, dated , for project ("Subcontract").

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall promptly make payment to all Claimants as hereinafter defined for all labor and material used, consumed or incorporated in the performance of the construction work to be performed under the Subcontract, then this obligation shall be void; otherwise to remain in full force and effect, subject, however, to the following conditions:

1. A Claimant is defined as one other than the Obligee having a contract with the Principal or with a direct subcontractor of the Principal to supply labor and/or materials and such labor and/or materials are actually used, consumed or incorporated in the performance of the construction work under the Subcontract.

2. The above-named Principal and Surety hereby jointly and severally agree with the Obligee that every Claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such Claimant's work or labor was done or performed or materials were furnished by such Claimant, may bring suit on this bond, prosecute the suit to final judgment for the amount due under Claimant's contract for the labor and/or materials supplied by the Claimant which were used, consumed or incorporated in the performance of the work, and have execution thereon; provided, however, that a Claimant having a direct contractual relationship with a direct subcontractor of the Principal shall have a right of action on this bond only if said Claimant notifies the Principal and Surety in writing of its claim within ninety (90) days from the date on which said Claimant did or performed the last labor and/or materials for which the claim is made. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal and Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the project is located, save that such service need not be made by a public officer.

3. No suit or action or arbitration shall be commenced hereunder by any Claimant:

a. After the expiration of the earlier of: (1) one year after the day on which the Claimant last supplied the labor and/or materials for which the claim is made; or (2) the limitation period set forth in the public works bond statutes, if any, in the location where the construction work is being performed. Any limitation contained in this bond which is prohibited by any law controlling in the state where the suit is filed shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by the law of that state, and said period of limitation shall be deemed to have accrued and shall commence to run on the day the Claimant last supplied the labor and/or materials for which the claim is made; and

Exhibit D – Sample Certificate of Insurance



UNIO-02 OP ID: VP

CERTIFICATE OF LIABILITY INSURANCE

DATE (MMDD/YYYY)
02/27/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Vanner Insurance Agency 11 Pinchot Court, Suite 100 Amherst, NY 14228 William J. Guinn	CONTACT NAME: PHONE (A/C, No, Ext): FAX (A/C, No): E-MAIL: ADDRESS: INSURER(S) AFFORDING COVERAGE NAIC # INSURER A : SAMPLE INS CO A- OR BETTER INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :
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INSURED INSURED NAME AND ADDRESS

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL		POLICY NUMBER	POLICY EFF (MMDD/YYYY)	POLICY EXP (MMDD/YYYY)	LIMITS	
		INSR	WVD					
A	GENERAL LIABILITY	X	X	POLICY NUMBER	01/01/2018	01/01/2019	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person)	\$ 10,000
	<input checked="" type="checkbox"/> Contractual Liability						PERSONAL & ADV INJURY	\$ 1,000,000
GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMPROP AGG	\$ 2,000,000
								\$
A	AUTOMOBILE LIABILITY	X	X	POLICY NUMBER	01/01/2018	01/01/2019	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS						PROPERTY DAMAGE (PER ACCIDENT)	\$
								\$
A	UMBRELLA LIAB	X	X	POLICY NUMBER	01/01/2018	01/01/2019	EACH OCCURRENCE	\$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR						AGGREGATE	\$ 5,000,000
	<input type="checkbox"/> CLAIMS-MADE							\$
DED RETENTION \$								\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	N/A	POLICY NUMBER	01/01/2018	01/01/2019	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT	\$ 500,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$ 500,000
							E.L. DISEASE - POLICY LIMIT	\$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Union Concrete and Construction Corp, Owner and any other parties required by written contract are additional insureds on a primary, non-contributory basis incl. ongoing and completed operations under general liability, auto and umbrella liability with waiver of subrogation in their favor under all policies.

CERTIFICATE HOLDER Union Concrete and Construction Corp PO Box 410 West Seneca, NY 14224	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2010/05)

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