

ATTACHMENT C

RESOLUTION 11-19

BATTLE OF RICHMOND PO2-628-1100006020

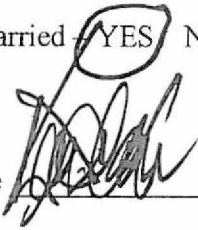
WHEREAS, the federal-aid highway program state administered funding is in the amount of \$440,000.00 for the **Richmond Battlefield Preservation Project** and

WHEREAS, the Madison County Fiscal Court does hereby authorize County Judge/Executive Kent Clark to sign the above mentioned Agreement, as well as any other necessary documents relating to this project.

The vote taken on said resolution, the result being as follows:

Motion Carried YES NO (Please Circle One)

Signature



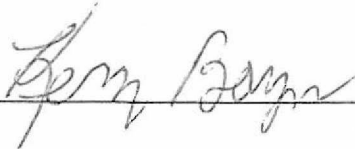
Date:

9-27-11

Title

Madison Co. Judge Executive

Witness



AGREEMENT BETWEEN THE
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
AND THE
MADISON COUNTY FISCAL COURT
BATTLE OF RICHMOND PRESERVATION PROJECT
FEDERAL PROJECT STPE 3034 006/AUTHORIZATION NUMBER 84216
PO2-628-1100006020
\$440,000.00

This AGREEMENT is made and entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, hereinafter the "CABINET" and the Madison County Fiscal Court, hereinafter the "RECIPIENT".

WITNESSETH:

WHEREAS, the Federal Highway Administration (FHWA), through the CABINET, has approved \$440,000.00 in SAFETEA-LU funding for the Battle of Richmond Preservation PROJECT, known as Federal Project Number STPE 3034 006 and the applicable Catalog of Federal Domestic Assistance number is 20.205-Highway Planning and Construction,

WHEREAS, the Federal-aid Highway Program is a State Administered Reimbursement Program and the RECIPIENT shall carry out this PROJECT in accordance with applicable Federal and State laws and regulations including all of Title 49 United States Code (USC), Title 23 United States Code (USC), 49 Code of Federal Regulations (CFR), and 23 Code of Federal Regulations (CFR),

WHEREAS, all Federal-aid projects must also specifically comply with the National Environmental Policy Act (NEPA), Section 4(f) of 49 United States Code (USC) 303, Section 106 of the National Historic Preservation Act, Sections 401 and 404 of the Clean Water Act, the Endangered Species Act, and any other applicable environmental laws and regulations,

WHEREAS, all Federal-aid projects must also specifically comply with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA),

WHEREAS, the requirements of the Disadvantaged Business Enterprise (DBE) program, as described in 23 CFR 635 Subpart A and Section 1101(b) of SAFETEA-LU (the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users), the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), and the Federal Buy America construction contracts requirements, as spelled out in 23 CFR 635 Subpart D, apply to all Federal and Federal-aid transportation programs,

WHEREAS, the RECIPIENT must comply with applicable CABINET policies and procedures and KRS 177 and KRS 45A, the Kentucky Model Procurement Code (MPC), as it relates to state agencies not local public agencies.

WHEREAS, Federal-aid projects are to serve a public purpose in perpetuity, the RECIPIENT is responsible for maintaining any real property or facilities improved pursuant to the PROJECT in perpetuity on a non-profit basis,

WHEREAS, the RECIPIENT shall refer to the *Interim Federal-Aid Project Development Guide for Local Public Agencies*, hereinafter the "GUIDE", and any future revisions for assistance in complying with this AGREEMENT,

WHEREAS, the RECIPIENT shall outline, undertake, and complete the work as described in the Scope of Work and Budget Summary (Attachment A) in accordance with the terms and conditions of this AGREEMENT, and consistent with the FHWA Contract Administration Manual, the CABINET/FHWA Stewardship Agreement, FHWA Form 1273 (Appendix J of the GUIDE), and all applicable State and Federal laws and regulations,

WHEREAS, the RECIPIENT shall demonstrate and shall maintain adequate staff, provide delivery systems, and sufficient accounting control to complete the PROJECT in accordance with all Federal and State laws and regulations addressed herein, and

WHEREAS, the RECIPIENT shall accept responsibility for all administration, staffing, reporting, monitoring, maintenance and operation costs for the PROJECT as identified under this AGREEMENT.

WHEREAS, the RECIPIENT has agreed to provide a minimum of 20% matching funds and to accept responsibility for all administration, staffing, maintenance and operation costs for the Project as identified under this AGREEMENT;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the CABINET and the RECIPIENT hereby agree as follows:

Section 1. Scope of Work & Budget Summary. It is understood that the PROJECT will enhance the transportation system as further described in the Scope of Work and Budget Summary (Attachment A, attached hereto and made a part of this AGREEMENT). In the Scope of Work and Budget Summary, the RECIPIENT is to include detailed expectations, individual activities, estimates, and a schedule with milestones which the CABINET will use as checkpoints for the PROJECT. Further, the RECIPIENT is to define the roles, responsibilities, and authorities of the various entities and/or organizational units with regard to the project development and project delivery processes specific to this PROJECT in the Scope of Work and Budget Summary.

The RECIPIENT shall identify and provide a point of contact, including adequate contact information, for who shall be in responsible charge to manage this PROJECT on the RECIPIENT's behalf, submit the Scope of Work and Budget Summary to the CABINET, and be responsible for ensuring that the RECIPIENT adheres to all terms and conditions of this AGREEMENT. The RECIPIENT shall have final design plans, specifications, and a total estimate prepared by a Professional Engineer licensed to practice in the Commonwealth of Kentucky and approved by the CABINET prior to any construction. The Project Development Checklist (LPA-PDC) (Appendix G of the GUIDE) shall be submitted by the RECIPIENT and certified by the CABINET prior to construction.

Section 2. Effective Date of Agreement and Term of Eligible Reimbursement. It is understood that the effective date of this AGREEMENT is the date the AGREEMENT is signed by the Secretary of the CABINET. After execution of the AGREEMENT, the CABINET will return an original AGREEMENT to the RECIPIENT and issue a Notice to Proceed to begin work on a particular Phase of the PROJECT. Expenditures made prior to the effective date of the AGREEMENT and before the Notice To Proceed for

the particular Phase covering the expenditure shall not be eligible for reimbursement. The Term of Eligible Reimbursement under this AGREEMENT shall be three (3) years from the date of its execution unless that Term is extended or amended by written agreement in accordance with the provisions of KRS 45A. Any and all funding obligated for any Phase of this PROJECT defined by the original Scope of Work and authorized changes shall be available to reimburse the RECIPIENT for eligible work activities completed and costs incurred after the effective date of this AGREEMENT and the Notice To Proceed covering that Phase of the PROJECT. If the PROJECT cannot be completed during the Term of Eligible Reimbursement under this AGREEMENT, the RECIPIENT may request from the Administering Office a contract extension for a period of time not to exceed one (1) calendar year.

This AGREEMENT is contingent upon the continued availability of appropriated Federal funding. If the funding appropriated for any Phase of the PROJECT becomes unavailable for any reason including the Kentucky General Assembly's failure to appropriate the funding, by operation of law or as the result of a reduction in Federal funding, further reimbursement of PROJECT expenditures may be denied, the PROJECT may be cancelled, the timeline extended or the scope amended by the CABINET either in whole or in part without penalty. Denial of further reimbursement, PROJECT cancellation, extension or amendment because of an interruption in the appropriated funding is not a default or breach of this AGREEMENT by the CABINET nor may such denial, cancellation, extension or amendment give rise to any claim against the CABINET.

Section 3. Duration of Project. It is understood and agreed by the parties hereto that the Scope of Work shall be completed within the period set forth herein under Section 2. In the event the RECIPIENT fails to perform the Scope of Work within the time allotted, or at any time the RECIPIENT fails to maintain adequate staff, project delivery systems, or sufficient accounting control, the CABINET reserves the right to cancel further reimbursements related to the PROJECT under the AGREEMENT. In the event the CABINET denies further reimbursement under this section, the RECIPIENT shall refund all reimbursements made by the CABINET to the RECIPIENT under this AGREEMENT.

Section 4. Project Funding. It is expressly understood that Federal funding for this PROJECT is being provided by the Federal Highway Administration (FHWA) through the CABINET, specifically through the Catalog of Federal Domestic Assistance program number 20.205, Highway Planning and Construction. The Federal share of the total cost of this AGREEMENT shall not exceed \$440,000.00 (the amount indicated on Attachment A) unless otherwise approved in writing by the CABINET with the concurrence of FHWA. If any funding available to the CABINET is not used, this funding may be returned to the RECIPIENT for eligible PROJECT costs only upon written agreement of the CABINET. Unless otherwise stated, the funding for the PROJECT shall be authorized in Phases and no reimbursement shall be considered for expenditures made before a Notice to Proceed for that Phase has been received. Reimbursement requests will be considered only for and up to the funding amount and type of work described in the approved Scope of Work and Budget and authorized by the Notice to Proceed for that Phase. The RECIPIENT has agreed to accept up to \$440,000.00 in Federal

reimbursement funding available as authorized in Phases for eligible PROJECT costs and shall be responsible for any costs in excess of \$440,000.00 that are necessary for completion of the approved Scope of Work and any authorized changes to the PROJECT.

The RECIPIENT shall pay all PROJECT expenses and only upon meeting all terms and conditions of this AGREEMENT will be eligible to receive Federal reimbursement funding. All charges to the PROJECT shall be supported by properly executed invoices, contracts, vouchers, or monthly employment data evidencing in proper detail the nature and propriety of the charge. The CABINET or FHWA may require additional documentation at their discretion.

Section 5. Allowable Costs. Funding may be used for restoration, repair, construction and other activities eligible under the Surface Transportation Program (STP) as defined within 23 USC 133(b). Funding may also be used for passenger and freight rail transportation and port infrastructure projects eligible for assistance under subsection 23 USC 601(a)(8). The PROJECT costs referred to in this AGREEMENT shall be those costs shown on the Work Plan (Attachment A) and submitted each month to the CABINET on the Office of Local Programs Reimbursement Request Form. The RECIPIENT shall follow 2 CFR 225-OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments" or 2 CFR 230-OMB Circular A-122 "Cost Principles for Non-Profit Organizations" or 2 CFR 220-OMB Circular A-21 "Cost Principles for Educational Institutions."

The RECIPIENT is responsible for adhering to all Federal and State laws and regulations listed in this AGREEMENT and all documents referred to herein. Reimbursement by the CABINET shall not be provided to the RECIPIENT if any requirements listed within 23 CFR 123 are not met. The CABINET shall reimburse the RECIPIENT upon request by the RECIPIENT providing proof of payment through appropriate documentation, which includes but is not limited to the following: work progress completed to date, expenses, cancelled checks, bank statements, verified affidavits, and employment reports. The RECIPIENT shall also submit with the request for reimbursement a formal letter that certifies that the work shown on the invoice has been performed in accordance with the terms of this AGREEMENT and approved plans and specifications, that the cost(s) shown are verified and are true and correct, and that the request for reimbursement in no way represents any degree of duplication of payments that have or will be received from other funding sources. This formal letter must be signed by the designated project manager for the RECIPIENT in responsible charge.

The RECIPIENT shall provide to the CABINET a pre-approved cost allocation plan prepared in accordance with the standards set forth in the Federal-aid Policy Guide and 49 CFR Part 18 in advance if any indirect costs are to be expended against the PROJECT. Reimbursement by the CABINET is also subject to the provisions of Sections 33 and 36 hereof. The CABINET or FHWA reserves the right to require additional documentation.

Section 6. Reporting and Monitoring. The RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA. The RECIPIENT shall submit to the Administering Office semi-annual progress reports detailing the status of the PROJECT.

This Federal-aid project is subject to the reporting requirements contained in the Federal Funding Accountability and Transparency Act (Transparency Act) of 2006 and its associated amendments. The Transparency Act requires entities receiving Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, to disclose certain information. This Agreement is subject to 31 USC 6101, 2 CFR 170, and 2 CFR Subtitle A, Chapter I and Part 25. The CABINET will not execute this Agreement unless the RECIPIENT completes the Transparency Act Reporting Form (Attachment E).

The making, recording and reporting of any purchases shall be undertaken in accordance with the requirements of KRS 45A and applicable federal guidelines. All checks, invoices, contract records, vouchers, orders, purchasing documents, and monthly employment data pertaining in whole or in part to the PROJECT shall be clearly identified and readily accessible. The RECIPIENT shall permit the CABINET and/or FHWA to conduct periodic site visits to ascertain compliance with Federal and State laws and regulations. The RECIPIENT shall maintain financial records for three years after project completion, Final Acceptance and final reimbursement in accordance with 49 CFR Part 18.42.

Section 7. Environmental Requirements. With the advice and assistance of the CABINET, the RECIPIENT shall ensure that all applicable environmental requirements are met including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 addressing the social and environmental effects of the proposed PROJECT. Adequate resources must be devoted to ensuring that all applicable environmental reviews under NEPA are completed on an expeditious basis and that the shortest existing applicable process under NEPA shall be utilized. Compliance with NEPA, Section 4(f) of 49 USC 303, Section 106 of the National Historic Preservation Act, Sections 401 and 404 of the Clean Water Act, Section 7 of the Endangered Species Act, and any other applicable environmental laws and regulations must be received to permit funding authorization by the FHWA. Specifically, Phase I design activities will be allowed to proceed without a valid environmental document; however, the commencement of any Phase II design, right-of-way acquisition, utility relocation, or construction activities shall not be permitted prior to approval of the appropriate environmental document. Federal funds will be available for reimbursement of construction costs upon successful completion of design activities.

Section 8. Land Acquisition. Should the PROJECT require the acquisition of any interest in real property by the RECIPIENT and the RECIPIENT does not have the authority to acquire property by eminent domain, the applicability of the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act, 49 CFR Part 24 (as amended) shall be limited to the following requirements: (1) Prior to making an offer for the property, the property owner shall be advised in writing that should negotiations fail to result in an amicable agreement, the RECIPIENT will not be able to acquire the property, and (2) The property owner shall be informed in writing of what the RECIPIENT believes to be the fair market value of the property based upon a fair market value appraisal approved prior to any offer by the CABINET, Division of Right of Way and Utilities.

The RECIPIENT shall ensure that all real property acquisition, relocation assistance, and property management are completed in a fair, equitable and approved manner consistent with all State and Federal laws and regulations governing the acquisition of real property for public use using Federal highway funding. (1) The RECIPIENT shall either adopt in writing the CABINET's written Policies and Procedures for Right of Way Acquisition and Relocation Assistance or present its own written Policies and Procedures for approval by the CABINET's Division of Right of Way and Utilities and, if applicable, the FHWA. (2) The RECIPIENT shall conduct all appraisals and appraisal reviews using personnel meeting the CABINET's minimum qualifications and listed on the CABINET's pre-qualified appraiser and reviewer list. (3) If the RECIPIENT chooses to use an acquisition consultant on all or any portion of the PROJECT, the selection of the consultant shall be in accordance with the CABINET's Division of Right of Way Guidance Manual. (4) All appraisals must be reviewed and approved by the CABINET's Central Office review appraisers, failure to do so will result in the PROJECT being ineligible for Transportation Enhancement funding reimbursement. (5) The RECIPIENT shall provide property management in accordance with approved procedures and be responsible for the abatement of any asbestos containing materials and removal of contaminated soils pursuant to applicable State and Federal laws and regulations. (6) The RECIPIENT shall provide the CABINET and, when applicable, FHWA, necessary assurance that all real property has been acquired and all displaced individuals, businesses, non-profit organizations and farms have been offered relocation assistance according to applicable State and Federal laws and regulations. (7) The RECIPIENT shall provide the CABINET, and when applicable, FHWA, necessary documentation for review and approval at various stages of the acquisition process, as described in the CABINET's Right of Way Relocation Assistance Guidance Manual.

The CABINET shall: (1) Review all appraisal reports to ensure proper appraisal practice and procedures as well as compliance with State and Federal laws and regulations, and (2) Approve the final value conclusion through the Director, Division of Right of Way and Utilities.

The RECIPIENT shall provide to the CABINET the following information on each parcel of real property to be acquired:

- A title opinion for the Property,
- An accurate legal description and plat delineating the shape and location of the Property to be acquired,
- The total area of the Property,
- The Property interest to be acquired

Should the acquisition of real property result in the displacement of a tenant-occupant, such displacement shall be subject to the requirements of the URA, as set out in implementing regulations 49 CFR Part 24. A displaced tenant shall be eligible for moving expenses and any other relocation expenses for which they might qualify.

Section 9. Restrictive Easements. The RECIPIENT acknowledges that the CABINET will require the placement of a restrictive easement approved by and in favor of the CABINET in the chain of title of any real property acquired or improved pursuant to the PROJECT in favor of the CABINET. If the Owner of any real property acquired or improved pursuant to the PROJECT is different from the RECIPIENT, then the Owner shall sign and be made a party to this AGREEMENT and the Owner hereby acknowledges, covenants and consents to the placement of a restrictive easement for perpetual maintenance of the property acquired or improved pursuant to the PROJECT in the chain of title in favor of the CABINET prior to final reimbursement by the CABINET.

Section 10. Permits and Licenses. The RECIPIENT is responsible for obtaining all permits and licenses required to initiate, perform and complete all phases of the PROJECT in an appropriate and timely manner. Per the CABINET/FHWA Stewardship Agreement, the PROJECT may require more involvement from the FHWA.

Section 11. Design and Construction Standards. All Federal and State design and construction criteria for the type of work shall be followed, including but not limited to 23 CFR 625, the CABINET's Highway Design Manual, the CABINET's Standard Drawings, the CABINET's Standard Specifications for Road and Bridge Construction, the CABINET's Drainage Manual, the CABINET's Structural Design Manual, the American Association of State Highway Transportation Officials' (AASHTO) "Policy on Geometric Design of Highways and Streets", and the Institute of Transportation Engineers' (ITE) Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the CABINET's Standard Specifications for Road and Bridge Construction, edition 2008 as revised, and as provided in Subsection 105.01 of said Specifications. All materials furnished shall be in accordance with Subsection 106 of said Specifications to include all CABINET List of Approved Materials. These standards, specifications, and criteria are incorporated in this AGREEMENT by this reference.

Section 12. Consultant Selection. The RECIPIENT shall be responsible for all PROJECT design activities, which may be completed either by the RECIPIENT's staff or a consultant. If the RECIPIENT selects to perform the design work with internal staff, these costs will be eligible for an in-kind match if pre-approved by the CABINET Administering Office. If the RECIPIENT selects to perform the work through a consultant, the RECIPIENT, with the oversight and approval of the CABINET, shall be responsible for the advertisement, selection, and contracting for consultant engineering and related services for the PROJECT in compliance with the Federal requirements set forth in the Brooks Act, Public Law 92-582, the FHWA policy outlined in 23 CFR 172, CABINET policies and procedures, the CABINET procurement policies, and the Kentucky Model Procurement Code as defined within KRS 45A.730-750. This requires the use of a Qualifications Based Selection (QBS) process for the selection of all engineering and related services. By complying with KRS 45A.730-750, the required Federal provisions of the Brooks Act will be satisfied. All plans and specifications must be prepared by a professional engineer or architect licensed in the Commonwealth of Kentucky and prequalified by the CABINET to

practice the type of work to be done. If no CABINET prequalification category exists, a consultant must receive approval by the CABINET prior to working on the PROJECT.

Section 13. Contractor Procurement. The RECIPIENT shall be responsible for all PROJECT construction activities, which may be completed either by the RECIPIENT's staff or by a contractor. If the RECIPIENT intends to use contractor services, the RECIPIENT shall be responsible for the advertisement, opening of bids, selection, and contracting for contractor services for the PROJECT, with the concurrence of the CABINET, in accordance with the Federal contract provisions listed in FHWA Form 1273 (Attachment D, attached hereto and made a part of this AGREEMENT) which take precedence over the Kentucky Model Procurement Code provisions KRS 45A.343 and KRS 45A.345-460, as well as KRS 424, 23 CFR 635, 23 USC 112. Bid proposals must be accepted for a minimum of 21 days from the date of the first advertisement for award. Contractors and subcontractors must be pre-qualified by the CABINET for the type of work prior to being awarded a contract. If no CABINET prequalification category exists, a contractor or subcontractor must receive the approval of the CABINET prior to working on the PROJECT.

The RECIPIENT shall prepare an independent engineer's estimate in accordance with 23 CFR 630, Subpart B to compare against the contractors' bids for reasonableness. The RECIPIENT shall thoroughly review all bids and obtain concurrence from the CABINET prior to the award or the rejection of any contract of bids for work or materials to be used on this PROJECT. Factors that should be considered in reviewing submitted bids are: a comparison of the bids against the engineer's estimate, the number of bids submitted, the distribution or range of bids received, the geographic location of bidders, any potential savings from readvertising the PROJECT, a comparison of bids against other recent bids for the same item or service, the urgency of the PROJECT, the number of times previously advertised or contracted for, the current market conditions, a comparison of unit bids versus engineer's estimate unit bids, the funding available. Determining whether the bids received are adequate involves considering any critical safety improvements, emergency repair or replacement of damaged facilities, the opening of otherwise completed facilities to traffic, furthering a phased construction schedule, or any other factors deemed important by the CABINET or FHWA. Specific Federal requirements defined within 23 CFR 635 require that the award be made to the lowest responsive bidder meeting the criteria of responsibility established by the CABINET.

Section 14. Contract Administration and Inspection. It is understood that the RECIPIENT shall be responsible for all aspects of administration, testing, and inspections to ensure the materials and construction meet CABINET specifications and Federal quality assurance specifications referenced in 23 CFR 637 and 23 CFR 635.105 (a) or (b). This includes providing daily on-site inspection of contractor work activities and prompt processing all of the paperwork associated with the construction contract, including any change orders. The RECIPIENT must receive prior written CABINET approval for all change orders, but such approval shall not increase the funding obligated to the RECIPIENT under this AGREEMENT or otherwise.

The RECIPIENT shall use the CABINET's 2009 Regional Highway and Bridge Construction Inspection advertisement for construction inspectors, or must receive CABINET approval to submit an Alternative Construction Inspection Plan. If the RECIPIENT does not have adequate staff to perform this work, the RECIPIENT may hire a consultant or enter into an agreement with another governmental agency to provide these services. The CABINET must review and approve the Construction Engineering and Inspection agreement and the agreement with the service provider must be submitted to FHWA for concurrence. If the RECIPIENT elects to hire a consultant, the RECIPIENT must ensure that the consultant staff is competent in construction inspection and performs all work under the direct supervision of a registered professional engineer or architect licensed in the Commonwealth of Kentucky. The use of a consultant does not relieve the RECIPIENT of ultimate responsibility for the proper administration and inspection of the construction. If a consultant is used to provide inspection services, the RECIPIENT must also provide an appropriately certified and licensed RECIPIENT employee to be in responsible charge of the PROJECT and oversee the inspections.

When an Alternative Construction Inspection Plan is submitted, the RECIPIENT must ensure sufficient quantity and quality are delivered and that proper inspection documentation is maintained. The Alternative Construction Inspection Plan must be performed under the supervision of a Professional Engineer licensed in the State of Kentucky, include credentials and experience of inspectors, indicate testing consistent with the CABINET's Sampling Manual, detail the frequency, who will be responsible, and what will be included in reports, and coordinate with the CABINET's construction inspector.

The CABINET and/or the FHWA may conduct an announced or unannounced field review of the PROJECT at any time. This field review is intended to verify conformance with all laws, regulations, and policies applicable to the Federal-aid Highway Program and provide assistance to the RECIPIENT where necessary.

Section 15. Davis-Bacon and Related Acts. The 1931 Davis-Bacon Act (prevailing Federal wage) requires the RECIPIENT of all Federal-aid construction projects to comply with contractor and subcontractor payment rates and fringe benefits as determined by the Secretary of Labor for corresponding classes of laborers and mechanics engaged on similar construction, alteration, and/or repair of public buildings or public works, painting, or decorating projects in the locality.

Section 16. The Contract Work Hours and Safety Standards Act. During the construction of the PROJECT, the RECIPIENT shall comply with the Contract Work Hours and Safety Standards Act which contains weekly (after 40 hours) overtime pay requirements and applies to most Federal contracts which may require or involve the employment of laborers and mechanics, including watchmen and guards. Section 107 of the Act provides health and safety standards on covered construction work which are administered by the Occupational Safety and Health Administration (OSHA). The RECIPIENT shall refer to the Contract Work Hours and Safety Standards Act for the requirements under this provision.

Section 17. The Copeland "Anti-Kickback" Act. The RECIPIENT shall comply with the "Anti-Kickback" section of the Copeland Act, which makes it punishable to induce any person working on a

Federally funded or assisted construction project to "give up any part of the compensation to which he is entitled under his contract of employment." The RECIPIENT shall refer to the Copeland Act for the requirements under this provision.

Section 18. Title VI - Civil Rights Act of 1964. The RECIPIENT shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the United States Department of Transportation issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the RECIPIENT pursuant thereto. Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any RECIPIENT of Federal assistance.

Section 19. Equal Employment Opportunity. In connection with the execution of this AGREEMENT, the RECIPIENT shall take affirmative action and not discriminate against any employee or applicant for employment to ensure that applicants are employed, and that employees are fairly treated during their employment, without regard to their race, religion, color, sex, national origin, age, or disability. 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 of training including apprenticeship. The RECIPIENT shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

Section 20. Disadvantaged Business Enterprise (DBE) Requirements. An applicant DBE firm must be given consideration for participation in the PROJECT and a DBE goal shall be set by the CABINET for work on the PROJECT. The CABINET shall review and approve the DBE goal based on CABINET processes and procedures. Any participating DBE firm must be certified as a DBE firm and be prequalified with the CABINET. The RECIPIENT agrees to comply with the DBE Requirements contained within 23 CFR 635 Subpart A, Section 1101(b) of Public Law 109-59, Chapter 3 of Title 49 USC and 49 CFR Part 26 to ensure equal opportunity to socially and economically disadvantaged small businesses.

Assurance. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts assisted by the United States Department of Transportation. 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 allowable remedy the CABINET deems appropriate. Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include this provision.

DBE Prompt Payment Requirement. The RECIPIENT must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all contractors must be paid within ten (10) working days after the RECIPIENT has been paid by the CABINET for work performed or services delivered. No recipient or contractor may withhold retainage on any subcontract on this PROJECT.

Section 21. Prohibited Interest. No member, officer, or employee of the CABINET or the RECIPIENT during his tenure or for one (1) year thereafter shall have any financial interest, direct or indirect, in this AGREEMENT or the proceeds thereof as identified in KRS 45A.340. The CABINET and the RECIPIENT shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. No member, officer, or employee of the CABINET or RECIPIENT shall collude or lobby on behalf of this PROJECT without penalty, including but not limited to suspension or debarment.

Section 22. Covenant Against Contingent Fees. The RECIPIENT warrants that no person, selling agency or other organization has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the CABINET shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Section 23. Interest of Members of or Delegates to Congress. No funding has been or will be paid to a member or delegate to the Congress of the United States in connection with the awarding of this Federal contract. Nor shall any member of or delegate to the Congress of the United States receive any benefit arising out of this Federal contract.

Section 24. Standards for the Treatment of Historic Properties. Historic preservation projects shall meet applicable Secretary of the Interior's Standards for the Treatment of Historic Properties, the Standards and Guidelines for Archeology and Historic Preservation, and all other applicable federal or state historic property requirements prior to the payment of any monies under this AGREEMENT.

Section 25. Maintenance as Public Facilities. The RECIPIENT agrees to maintain the facilities in an acceptable condition and for a public purpose in perpetuity and in accordance with the Maintenance Plan (Attachment B, attached hereto and made a part of this AGREEMENT). In addition, any applicable landscaping in any project shall be maintained in an acceptable condition to include mowing, trimming, or other maintenance in perpetuity. In the event that the property is not maintained as a public facility, the RECIPIENT shall reimburse the FHWA for all proceeds provided for in this PROJECT including any applicable interest, unless such change in use is approved in writing by the CABINET and FHWA, if applicable.

Section 26. Americans with Disabilities Act. The RECIPIENT agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation. ADA prohibits discrimination against otherwise qualified individuals under any program or activity receiving Federal financial assistance covered by this AGREEMENT and imposes requirements that affect the design, construction, and maintenance of all transportation projects, to provide access to all facilities.

Section 27. Applicable Laws. This AGREEMENT shall be in accordance with the laws of the United States Department of Transportation, Federal Highway Administration, the United States of America, and the Commonwealth of Kentucky.

Section 28. Hold Harmless Clause. To the extent permitted by law, the RECIPIENT shall indemnify and hold harmless the FHWA and the CABINET and all of its officers, agents, and employees from all suits, actions, or claims of any character arising from any injuries, payments or damages received or claimed by any person, persons, or property resulting from implementation of any phase of the PROJECT or occurring on or near the PROJECT site.

Section 29. Contract Completion. The RECIPIENT is responsible for ensuring that all PROJECT construction activities have been completed and are responsible for providing all of the necessary paperwork as required by the construction contract. This involves conducting a pre-audit of all contract items and associated paperwork. When complete, the RECIPIENT's project engineer in responsible charge of the PROJECT shall notify the CABINET the PROJECT is ready for final inspection. The RECIPIENT will conduct a field inspection to verify completion of the work in substantial conformance with the AGREEMENT. When both the RECIPIENT and the CABINET accept the field work as complete, the RECIPIENT's project manager shall certify the PROJECT was constructed in accordance with the plans and specifications. The CABINET will complete a Final Acceptance Report.

Upon receipt of the CABINET's Final Acceptance Report, the RECIPIENT will issue the final payment to the contractor with an official Release of Contractor form for signature. Upon receipt of the contractor's agreement to the Release of Contractor paperwork, the RECIPIENT will transmit the Final Estimate and Release to the CABINET. The CABINET will then submit a Final Voucher request to the FHWA Financial Management Team with copies of the CABINET's Final Acceptance Report and signed Final Release of Contractor. Approval of the Final Voucher will constitute Final Acceptance by the FHWA. In accordance with 49 CFR 18.42, the RECIPIENT shall maintain all PROJECT records for three (3) years after final payment and the CABINET will retain records for three (3) years on site and an additional five (5) years in Archives.

Section 30. Audit and Inspection. The RECIPIENT, contractor and any subcontractors shall permit the CABINET, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect and approve all phases of the PROJECT and all relevant PROJECT data and records, including any audit(s) of the RECIPIENT pertaining to the PROJECT.

The RECIPIENT hereby acknowledges its duty to the CABINET to determine whether it is subject to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. The RECIPIENT shall follow 2 CFR 225-OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments" or 2 CFR 230-OMB Circular A-122 "Cost Principles for Non-Profit Organizations" or 2 CFR 220-OMB Circular A-21 "Cost Principles for Educational Institutions." If the RECIPIENT has expended more than \$500,000 in Federal funding from all sources in the RECIPIENT's fiscal year, the

RECIPIENT shall provide the CABINET copies of their OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations" audit reports within 9 months of their fiscal year end. The RECIPIENT shall provide the CABINET with copies of any audits or reviews prepared as a result of that Act.

The RECIPIENT hereby acknowledges it is responsible to inform any entity it intends to hire or use as a contractor, as defined in KRS 45A.030(9), that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any of the contractor's books, documents, papers, records, or other evidence, which are directly pertinent to this AGREEMENT for the purpose of financial audit or program review. Furthermore, any of the contractor's books, documents, papers, records or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the AGREEMENT. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information, which would otherwise be subject to public release if a State government agency were providing the service.

Section 31. Campaign Finance. The RECIPIENT shall certify that the contractor swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the entity which he/she represents has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

Section 32. Violations. Pursuant to KRS 45A.485, the RECIPIENT shall certify that all contractors shall reveal to the CABINET any final determination of a violation within the previous five (5) year period pursuant to KRS Chapter 139, 136, 141, 337, 338, 341 and 342. These statutes relate to the State sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health law, unemployment compensation law, and workers compensation insurance law, respectively.

The RECIPIENT shall certify that all contractors agree to be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this AGREEMENT. Failure to reveal a final determination of a violation of the referenced statutes or to comply with these statutes for the duration of this AGREEMENT shall be grounds for the cancellation of the contract or subcontract and disqualification of the contractor from eligibility for future State contracts for a period of two (2) years.

Section 33. Personal Service Contracts and Memoranda of Agreement. If this AGREEMENT comes under the purview of KRS 45A.690 - 45A.725, payments on personal service contracts and

memoranda of agreement shall not be authorized for services rendered after disapproval of the Government Contract Review Committee unless the decision of the committee is overridden by the Secretary of Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.

Section 34. Disputes. Any dispute concerning a question of fact in connection with the work, not disposed of by agreement between the RECIPIENT and the CABINET, shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. Regulations concerning any claims to be filed by a contractor are referenced in 23 CFR 635.124.

Section 35. Agreement Change. Any proposed change to the Scope of Work or time extension to this AGREEMENT shall comply with 23 CFR 635.120 and 635.121 and shall be evidenced in writing at the mutual consent of the RECIPIENT and the CABINET.

Section 36. Termination. The CABINET may cancel all reimbursements under this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving thirty (30) days written notice of such cancellation to the RECIPIENT. If reimbursement under this AGREEMENT is canceled under this section by reason other than violation of this AGREEMENT or any applicable law by the RECIPIENT, its agents, employees and contractors, the CABINET shall reimburse the RECIPIENT according to the terms hereof for all expenses incurred under this AGREEMENT to the date of such cancellation of reimbursement. The RECIPIENT may seek to cancel its obligations under this AGREEMENT at any time deemed to be in the best interest of the RECIPIENT by giving thirty (30) days written notice of such request to the CABINET. If the CABINET agrees to allow the RECIPIENT to cancel the PROJECT or cancel its obligations under this AGREEMENT, the RECIPIENT shall reimburse the CABINET for all Federal funding reimbursements made under this AGREEMENT.

Section 37. Resolution. The RECIPIENT shall pass a resolution authorizing the CJE to sign this AGREEMENT on behalf of the **County**. A copy of the resolution shall be attached to the AGREEMENT and returned to the CABINET prior to full execution of this PROJECT.

IN TESTIMONY WHEREOF, the parties have hereto caused this AGREEMENT to be executed upon signature by their proper officers and representatives.

KENTUCKY TRANSPORTATION CABINET:

Approved as to form and legality:

Commonwealth of Kentucky

Attorney
Transportation Cabinet

Date: _____

Michael W. Hancock, P.E., Secretary
Transportation Cabinet

Date: _____

LOCAL PUBLIC AGENCY:

Approved as to form and legality:

Madison County Fiscal Court

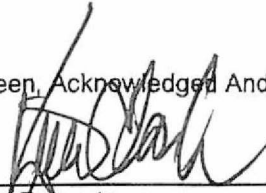
Attorney
Madison County

Date: _____

Madison County, County Judge/Executive

Date: Sept 27, 2011

Have Seen, Acknowledged And Agreed To By:


Owner of Property

Date: Sept 27, 2011

Attorney

Date: _____

ATTACHMENT A

“SCOPE OF WORK AND BUDGET SUMMARY”

The project will involve the rehabilitation of the Barnett-Herndon House to use as a visitor center for the Battle of Richmond Park located on US-421. The visitor center will also interpret and guide the driving public on a Civil War historic driving tour of Kentucky sites and battlefields.

DESCRIPTION OF ITEM/ACTIVITY/PHASE	TE Funding Requested	Match Funding	Total Funds
Rehabilitation of Barnett- Herndon House	\$440,000.00		\$440,000.00
Interpretative Signage		\$30,000.00	\$30,000.00
Civil War Tour Brochures		\$20,000.00	\$20,000.00
Additional Structure Rehabilitation		\$50,000.00	\$50,000.00
Archaeological Survey		\$10,000.00	\$10,000.00
TOTAL FUNDS REQUESTED	\$440,000.00	\$110,000.00	\$550,000.00

ATTACHMENT B

“MAINTENANCE PLAN”

The Madison County Fiscal Court will provide for all maintenance costs in the future to sustain the Battlefield project. The Madison County Fiscal Court currently maintains the program and all its current costs as it relates to maintenance and has since its inception in 2004.

Federal Funding Accountability and Transparency Act

*** AGREEMENT CAN NOT BE EXECUTED UNLESS ALL YELLOW BOXES ARE COMPLETED ***

1. SUB-AWARDEE

Name: MADISON COUNTY FISCAL COURT
Address: 101 WEST MAIN STREET
RICHMOND, KENTUCKY 40475

2. DUNS NUMBER

007453590

Unique 9 digit number issued by Dun & Bradstreet. To obtain a DUNS number (if you agency does not already have one) please access:
<http://fedgov.dnb.com/webform>

3. CCR REGISTRATION (CAGE code)

3KMY8

Unique 5 digit number issued by the Central Contractor Registration. To obtain a CCR number (if your agency does not already have one) please access:
<https://www.bpn.gov/ccr/default.aspx>

4. TOTAL COMPENSATION AND NAMES OF TOP 5 EXECUTIVES

All agencies are required to report the Top 5 Highly Compensated officers for their agency if they meet **BOTH** of the following criteria:

- A) More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and
- B) Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC)

NO- Does not meet both criteria A & B

NO

If no, please skip to box 5

YES- Meets both criteria A & B

If yes, please fill out 1-5 with Executive name and compensation.

4.1	Executive Name	Compensation
4.2	Executive Name	Compensation
4.3	Executive Name	Compensation
4.4	Executive Name	Compensation
4.5	Executive Name	Compensation

5. PREPARED BY:

DATE:

Name: SHIRL CROSS
Title: GRANT COORDINATOR

9/6/2011

Additional information about the Federal Funding Accountability Transparency Act (FFATA) can be found at:
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>

ATTACHMENT D FHWA FORM 1273

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

	Page
I. General	1
II. Nondiscrimination	1
III. Nonsegregated Facilities	3
IV. Payment of Predetermined Minimum Wage	3
V. Statements and Payrolls	5
VI. Record of Materials, Supplies, and Labor	5
VII. Subletting or Assigning the Contract	5
VIII. Safety: Accident Prevention	6
IX. False Statements Concerning Highway Projects	6
X. Implementation of Clean Air Act and Federal Water Pollution Control Act	6
XI. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion	6
XII. Certification Regarding Use of Contract Funds for Lobbying	8

ATTACHMENTS

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

I. GENERAL

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

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

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

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 6.12:

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

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

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Training and Promotion:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

each day 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 FHW-1591, if on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deduction as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276a)) the full amount of wages and bona fide fringe benefits (for cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, inasmuch as any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conforming under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHW-1485) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contractors made on costs reasonably anticipated for bona fide fringe benefits under Section 10(a)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

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

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

2. Classification:

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

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

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

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

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

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

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

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

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

3. Payment of Fringe Benefits:

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

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

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

a. Apprentices:

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

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

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

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

b. Trainees:

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

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

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

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

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

c. Helpers:

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

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

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

6. Withholding:

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages: