

DARDENNE



**CITY OF DARDENNE PRAIRIE
2032 HANLEY ROAD
DARDENNE PRAIRIE, MO 63368**

**BOARD OF ALDERMEN
WORK SESSION AGENDA
DECEMBER 7, 2022
6:00 p.m.**

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

NEW BUSINESS

1. 2023 Draft Budget

STAFF COMMUNICATIONS

1. City Attorney
2. City Engineer
3. City Administrator
4. Aldermen
5. Mayor

CLOSED SESSION

Roll call vote to hold closed session pursuant to RSMo 610.021 section _____
Litigation and Privileged Communications (1)
Real Estate (2)
Personnel (3)
Labor (9)
Bid Specs (11)
Audit (17)

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT



City Administrator
Phone 636.755.5303
Jknowles@DardennePrairie.org

City Hall
2032 Hanley Road
Dardenne Prairie, MO 63368
Phone 636.561.1718
Fax 636.625.0077

December 2nd, 2022

To the Honorable Mayor John Gotway and Board of Alderman:

In compliance with Section 67.010.1 of the Revised Statutes of Missouri and Section 130.020 of the Dardenne Prairie Municipal Code, I am pleased to present the 2023 Operating Budget for the City of Dardenne Prairie. This budget comprises estimates for revenue and expenditures necessary to operate city government, fund parks and recreation activities, invest in capital improvements, service public debt and maintain a sound unreserved fund balance.

It is estimated that on January 1, 2023 the City will have a total fund balance of \$10.99 million across all funds. This will include \$4.78 million in the General Fund; \$1.32 Million in the Parks and Storm Water Control Fund; \$984,895 in the Special Revenue Fund; \$928,672 in the Capital Improvement Fund; \$2.71 million in the American Rescue Plan Act Fund; and \$251,027 in the Prop T Transportation Tax Fund.

Projected Revenues in 2022 from all sources are expected to total \$5.73 Million. Expenses for all activities, including \$300,000 in street maintenance and repairs under the County Road Maintenance Contract are estimated to be \$4,322,334.08. In addition, the Board authorized \$2,110,235.07 worth of Capital Improvement Projects for 2023 which includes nearly \$1.99 million in additional road work will bring total outlays to \$6.4 million.

The major sources of revenue for the City include: General Sales Tax (1%) of about \$1.37 million; Capital Improvement Sales Tax (0.5%) of about \$685,000; Motor Fuel Tax of about \$500,000; Property Tax (9.69 cents per \$100 of assessed valuation) of about \$344,000; Road & Bridge Tax of about \$300,000; Municipal Court Fines of about \$110,000; the Parks & Storm Water Sales Tax (0.05%) of about \$685,000. Details are included in the attached budget.

The major expenses, excluding capital improvements, include: Debt Service of about \$1.41 million (principal & interest on Certificates of Participation for the Athletic Complex and for Street Slab Replacement Program) and partial rebate of general sales taxes to the Dardenne Towne Center Transportation Development District); personnel costs of about \$1,109,960.92; Police Department Contract of \$389,703.62; Road maintenance contract with St. Charles County of about \$343,737. Details are included in the attached budget.

Following is a listing of the major new items contained within the 2022 budget:


- We have added a debt service for the Transportation COPS Series 2022 in the amount of \$448,850.
- We will see our first full year of revenue for the Transportation Sales tax.
- Bryan Rd NID revenue and debt service has been zeroed out as the bonds have been paid.
- We are expecting to get to full staffing level this year. Please see attached Org Chart.
- We calculated an average of 6% raises for staff, along with an increase of 20% increase in health care costs premiums to the city.
- Carryover of vehicle purchase from last year to replace the current Chevy Suburban used by the administration in City Hall. A new hybrid Ford Explorer is currently on order through the state's contract.
- The slab replacement program with St. Charles County has been removed and the \$1.99 million dollar change order for slab replacements with M&H has been added.

The administration continues to set a budget policy that is grounded in both conservative revenue projections and controlled spending. With an uncertain economy on the horizon, staff will monitor revenue trends and ensure our revenues are on track for the budget. Our policy is that any change in revenue projections throughout the year will result in a corresponding cut in projected expenditures.

Last year we implemented spending controls on staff to ensure financial review and oversight of all purchases over \$100. We will continue to closely monitor purchases to ensure fiscal responsibility and adjust our spending when necessary to guard against any possible shortfalls caused by fluctuations in the economy.

The staff takes seriously its commitment to providing the highest quality of services to our citizens while being good stewards of our city tax dollars. We will continue throughout the year to ensure both prudent spending and an excellent return on the investment of each dollar spent.

Respectfully submitted,



James W. Knowles III
City Administrator

DARDENNE



PRAIRIE

**CITY OF DARDENNE PRAIRIE
2032 HANLEY ROAD
DARDENNE PRAIRIE, MO 63368**

**BOARD OF ALDERMEN
MEETING AGENDA
DECEMBER 7, 2022
7:00 p.m.**

CALL MEETING TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

Mayor Gotway
Alderman Costlow
Alderman Johnson
Alderman Reilly
Alderman Sansone
Alderman Ungerboeck
Alderman Wandling

CONSENT AGENDA

1. Expenditures for Approval 12-07-22
2. Liquor License – FastLane II – 7407 South Outer 364 – Intoxicating Liquor (all kinds)
Original Package & Sunday

ITEMS REMOVED FROM CONSENT AGENDA

OPEN FORUM

NEW BUSINESS

1. Bill #22-71

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING AND DIRECTING THE MAYOR TO FURTHER NEGOTIATE, EXECUTE, ACKNOWLEDGE, DELIVER AND ADMINISTER ON BEHALF OF THE CITY AN INTERGOVERNMENTAL LAW ENFORCEMENT SERVICES AGREEMENT BY AND BETWEEN ST. CHARLES COUNTY AND THE CITY OF DARDENNE PRAIRIE FOR PATROL SERVICES AND ENFORCEMENT OF CERTAIN MUNICIPAL ORDINANCES

2. Bill #22-72

AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION AND THE CITY OF DARDENNE PRAIRIE FOR A SURFACE TRANSPORTATION BLOCK GRANT (STBG)-URBAN PROGRAM AGREEMENT TO FUND THE TOWN SQUARE AVENUE PROJECT

STAFF COMMUNICATIONS

1. City Attorney
2. City Engineer
3. City Administrator
4. Aldermen
5. Mayor

CLOSED SESSION

Roll call vote to hold closed session pursuant to RSMo 610.021 section _____

Litigation and Privileged Communications (1)

Real Estate (2)

Personnel (3)

Labor (9)

Bid Specs (11)

Audit (17)

RETURN TO REGULAR MEETING AGENDA

ADJOURNMENT

EXPENDITURES FOR APPROVAL
12/7/2022

1 AFLAC	October, 2022	255.48
2 C N A Surety	Bond: Bohn	100.00
3 C N A Surety	Bond: Clark	125.00
4 Childs Tire	Trailer Tire	110.50
5 Cuivre River Electric	Light on Weldon Spring	35.62
6 Cuivre River Electric	Henke/Feise Rd. Traffic Signals	62.00
7 Cuivre River Electric	Light at Georgetown Park	63.60
8 Cuivre River Electric	Lights at St. Williams Apts.	51.36
9 Cuivre River Electric	Hanley Rd. Traffic Signal	82.00
10 DeWitt	Annual Membership - Workers Comp	300.00
11 Duckett Creek	Sewer to 12-31-22	100.00
12 First Bank	Credit Card Charges	1,650.14
13 Hamilton Weber	October, 2022 Legal Fees	3,938.26
14 Insurance - The Hartford	November, 2022	320.70
15 Insurance: Anthem	Health - December, 2022	5,865.02
16 Insurance: Principal Life	Life: December, 2022	321.08
17 Jennifer Bohn	Reimbursement for Bingo Prizes	100.00
18 MACA	Bohn Annual Membership	60.00
19 MO Lawyers Media	Public Hearing Notices	54.40
20 MOCCFOA - Eastern Division	Mayor/CC Annual Luncheon	175.00
21 Parks: American Bands	Trixie Delight: 5-18-23 Concert Deposit	1,600.00
22 Parks: American Bands	SuperJam: 06-15-23 Concert Deposit	1,600.00
23 Parks: That 80's Band	That 80's Band: 04-20-23 Concert Deposit	1,400.00
24 Parks: Various Umpires	Umpire Pay 11/29/22	575.00
25 Payroll	11-25-22 Payroll	27,092.65
26 Professional Irrigation Systems	Irrigation: Winterization & Repair	1,060.93
27 Staples	Office Supplies	174.72
28 The Pump Shop	Fountain Winterization	330.00
29 UMB Bank, NA	November, 2022 TDD Sales Tax Payment	38,549.10
		86,152.56

Approved by Board of Aldermen 12-07-22

Mayor John Gotway

RBA FORM (OFFICE USE ONLY)

MEETING DATE: 12/07/2022

Regular (☒) Work Session (☐)

ATTACHMENT: YES (☒) NO (☐)

Contract (☒) Ordinance (☐) Other (☐)

Request for Board Action

By: City Administrator

Ward ALL

Description:

- o **Request for Board Action – Contract Extension for Police Services
– St. Charles County Police Department**

Recommendation: Staff – Approve (☒) Disapprove (☐)

Summary/Explanation:

The current intergovernmental agreement with St. Charles County providing for police services in the City of Dardenne Prairie is set to expire on December 31st, 2022. Over the past year, the City has held discussions with St. Charles County as well as leaders of other area police departments regarding options for extending our police services over the next three years.

We issued an RFP back in mid-October and actively solicited proposals from area policing agencies. We received only two proposals, which have been provided to you previously.

The RFP asked for two options. The current 16 hours per day option and an increased services option of 24 hours per day. The 24 hours per day option was approximately 50% higher than the 16 hours per day option. After reviewing the calls for service, I do not believe that increased patrol is warranted, especially considering the increase in costs.

Of the two proposals, St. Charles County Police Department was significantly lower while providing a comparable level of service. It is hereby recommended the Board approve the ordinance presented extending our intergovernmental agreement with St. Charles County for Police Services at 16 hours per day for the next three years.

Budget Impact: (revenue generated, estimated cost, CIP item, etc.)

The contract is for 3 years and represents an increase over prior year's expenditures. Controlling for the year 1 increase due to capital expenditures related to outfitting a new car, the average cost increase remains between 2-2 1/2% per year. The three-year cost breakdown is below.

Year 1 – 389,703.62

Year 2 – 348,329.72

Year 3 – 356,445.97

RBA requested by: James W. Knowles III

Date: 12/02/2022

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE,
MISSOURI, AUTHORIZING AND DIRECTING THE
MAYOR TO FURTHER NEGOTIATE, EXECUTE,
ACKNOWLEDGE, DELIVER AND ADMINISTER ON
BEHALF OF THE CITY AN INTERGOVERNMENTAL
LAW ENFORCEMENT SERVICES AGREEMENT BY AND
BETWEEN ST. CHARLES COUNTY AND THE CITY OF
DARDENNE PRAIRIE FOR PATROL SERVICES AND
ENFORCEMENT OF CERTAIN MUNICIPAL
ORDINANCES**

WHEREAS, Section 85.620 of the Revised Statutes of Missouri gives a fourth class city the power to appoint the police of the City in such manner as prescribed by ordinance; and

WHEREAS, Section 79.290 of the Revised Statutes of Missouri provides that "The duties, powers and privileges of officers of every character in any way connected with the city government, not herein defined, shall be prescribed by ordinance;" and

WHEREAS, Section 70.220 of the Revised Statutes of Missouri provides that "Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision... for a common service;" and

WHEREAS, Section 70.230 of the Revised Statutes of Missouri provides that "Any municipality may exercise the power referred to in section 70.220 by ordinance duly enacted..." and

WHEREAS, pursuant to Section 10.500 of Article X of the St. Charles County Charter, "Any City, Town, or Village of this County may contract with the County for service delivery by either entity on a proportional cost basis. The County is hereby prohibited from setting fees or otherwise assessing charges in contracts with Cities, Towns, or Villages within the County in excess of the actual cost of delivering such service..."; and

WHEREAS, Section 70.815 of the Revised Statutes of Missouri provides that "The governing body of any political subdivision may by ordinance, order or other ruling enter into a contract or agreement with any other political subdivision ... for the provision of police services by one political subdivision to another on request. The scope of the agreement may be general or specific, and may or may not provide for compensation for such services. Officers providing police services in another jurisdiction pursuant to such an agreement shall have the same powers of arrest as officers of the requesting political subdivision, and shall have the same immunity as if acting within their own jurisdiction;" and

WHEREAS, the Board of Aldermen of the City of Dardenne Prairie has determined that

the provision of police patrol in the City is necessary for the health, safety and welfare of its residents; and

WHEREAS, the County has submitted an Intergovernmental Law Enforcement Services Agreement that includes the provision of municipal law enforcement patrol and crime response services for one hundred twelve (112) hours per week (usually sixteen (16) hours per day); and

WHEREAS, the Board of Aldermen of the City of Dardenne Prairie desires to enter into an agreement with St. Charles County on behalf of the St. Charles County Police Department establishing the St. Charles County Police Department as the law enforcement authority for the City of Dardenne Prairie;

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the form, terms, and provisions of the Intergovernmental Law Enforcement Services Agreement (the "Agreement") by and between St. Charles County and the City of Dardenne Prairie, attached hereto, marked as **Exhibit "A"**, and incorporated by reference herein, establishing the St. Charles County Police Department as the law enforcement authority for the City of Dardenne Prairie, be and they hereby are approved and the Mayor is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

SECTION 2. The City Clerk of the City of Dardenne Prairie is hereby ordered to cause three certified copies of this Ordinance to be provided to the St. Charles County Counselor's Office.

SECTION 3. The City Treasurer of the City of Dardenne Prairie is hereby ordered to make an expenditure in the amount of Five Hundred Eighty-four Thousand Five Hundred Fifty-five and 44/100 dollars (\$584,555.44) as payment to the County of St. Charles pursuant to the terms of the Intergovernmental Law Enforcement Services Agreement Between St. Charles County and the City of Dardenne Prairie authorized pursuant to Section 1 of this Ordinance.

SECTION 4. Savings Clause: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

SECTION 5. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board

of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 6. Effective Date: This Ordinance shall take effect and be in force from and after its passage by the Board of Aldermen and its approval by the Mayor of the City of Dardenne Prairie, Missouri.

Read two times, passed and approved this ____ day of _____, 2022.

As Presiding Officer and as Mayor

Attest: _____
City Clerk

Approved this ____ day of _____, 2022.

Mayor

Attest: _____
City Clerk

**INTERGOVERNMENTAL LAW ENFORCEMENT SERVICES
AGREEMENT BETWEEN ST. CHARLES COUNTY
AND THE CITY OF DARDENNE PRAIRIE**

This contract (hereinafter “Agreement”) is by and between St. Charles County, Missouri (hereinafter “County”) and the City of Dardenne Prairie, Missouri (hereinafter “Municipality”), which parties enter into this three-year Agreement establishing the St. Charles County Police Department as the law enforcement authority for the Municipality. This Agreement is effective on the date of execution of the last signatory to this contract.

In consideration of the covenants, conditions, and provisions set out in this Agreement, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the County and the Municipality reach the following agreement for their mutual benefit:

Section I: Definitions

In addition to the terms previously or subsequently defined, the following terms used herein shall be and have the following meanings when used in this Agreement:

- A. CITY CODE: Most recently published Code of the City of Dardenne Prairie, as amended from time to time.
- B. CITY HALL: Shall mean the building designated as the City Hall of the City of Dardenne Prairie, Missouri located at 2032 Hanley Road, Dardenne Prairie, Missouri 63368.
- C. CONTRACT YEAR: Shall mean either, Year One (2023), Year Two (2024) or Year Three (2025) of the Agreement as those terms are defined in this Section.
- D. DEPARTMENT: Shall mean the St. Charles County Police Department, which is responsible for the provision of services under this contract to the Municipality.

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- E. MERIT SYSTEM: The system established in Chapter 115 of the Ordinances of St. Charles County, Missouri pursuant to the authority of Article VII of the Charter of the County of St. Charles, Missouri.
- F. SUPPORT SERVICES: Shall mean law enforcement detectives, forensic science and laboratory services, dispatching services and special operations services, such as canine, bomb disposal and tactical response team (SWAT) services, as well as administrative services such as vehicle maintenance and repair.
- G. YEAR ONE: Shall mean the term of January 1, 2023 to December 31, 2023.
- H. YEAR TWO: Shall mean the term of January 1, 2024 to December 31, 2024.
- I. YEAR THREE: Shall mean the term of January 1, 2025 to December 31, 2025.

Section II

County and Municipality have agreed that County will provide Police Officers during certain mutually agreed upon times to act in the role of Municipality's law enforcement presence within the Municipality's corporate limits, with the understanding that the Officers are subject to the chain of command and institutional policies of St. Charles County and its Police Department. This Agreement thus provides for the presence in the Municipality of certain Police Department personnel. While the Agreement currently contemplates that Municipality and County have agreed upon Police Officers, to be present within the municipality or engaged in law enforcement work on behalf of the municipality for a specific number of hours daily, Municipality has provided County with notice that as Municipal resources increase, Municipality may wish to increase the Police Department personnel on duty within Municipality, either in numbers or by increasing the times when Police Department personnel are present in Municipality in the manner provided in Section V subsection D of the Agreement.

When Police Officers are not present within the Municipality's corporate limits, County will respond to emergency calls from the citizens of Dardenne Prairie for service originating within the corporate limits of Municipality within the priority of all calls for service for the County.

Nothing in this Agreement shall relieve Municipality of its financial obligation to the St. Charles County Department of Corrections for jail usage for municipal ordinance violations.

The responsibilities and obligations of the parties are set out in further detail below.

Section III: General Terms

A. Obligations of the County:

The County agrees to perform the following services and acts:

1. The St. Charles County Police Department will provide municipal law enforcement patrol and crime response services to Municipality for **one hundred twelve (112) hours per week (usually sixteen (16) hours per day)**. Said patrol and crime response services may include "Golf cart patrols" or alternative modes (bicycle, walking, etc.) of patrol in neighborhoods and during special events, motorcycle patrols, and traffic enforcement units operating within the corporate limits of Municipality.
2. Patrol Services shall be in a St. Charles County patrol vehicle with Police Department markings, carrying the designation "City of Dardenne Prairie" on the driver and passenger rear quarter panel of the vehicle. Said vehicle shall be capable of being monitored remotely through GPS tracking.
3. Patrol and response services shall be delivered in the first instance by Police Officers assigned sixteen (16) hours each day, seven days a week, such time is projected to be split across the day (6:15 a.m. to 6:15 p.m.) and evening (6:15 p.m. to 6:15 a.m.) shift of each day, seven days per week but always as determined by the County Police Department after consultation from

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Municipality and subject to any increase in Police Department personnel on duty within the Municipality, either in numbers or by increasing the times when Police Department personnel are present in the Municipality in the manner provided in Section V. subsection D of this Agreement.

4. Back-up and support of the Police Department shall be available to that Police Officer in the same manner as to all Police Officers in the Police Department, including but not limited to, Support Services.

5. While Police Officers are on duty and present in the Municipality, they shall operate within the Police Department's normal call response policy. This policy requires that they respond to certain calls as back-up officers, and those calls may be outside Municipality's corporate limits. If there are other Officers available and within reasonable response time, other Police Officers will be called first for back-up. Likewise, all Police Officers on duty will be available as back-up to Police Officers operating in Municipality.

6. As part of Support Services, the St. Charles County Emergency Communications Department will provide law enforcement dispatching services, normally contracted for by municipal police departments as a separate service, such dispatching services to include:

- a. Dispatching of officers to 9-1-1 calls;
- b. Dispatching of officers to calls received from seven-digit dialing;
- c. Regional Justice Information Systems (REJIS) transactions;
- d. Missouri Uniform Law Enforcement System (MULES) transactions;
- e. Status checks;
- f. Criminal history checks;
- g. Dispatching service calls (non-emergency); and
- h. Other dispatching services as may be required from time to time.
- i. Integration of "Flock Camera" system for monitoring and notification to law enforcement officials.

7. Police Officers will write violations of the law, making reference to violations of existing Ordinances of the City of Dardenne Prairie, and if no such ordinance or State law exists, then to County ordinance, where applicable. At no time will Police Officers enforce private subdivision

covenants. County shall provide a protocols manual for Municipality, and likewise Municipality shall be responsible for providing to County copies of Municipal Ordinance books and sufficient Summons books throughout the year for the assigned Police Officers, and such additional Police Officers who will provide coverage on the assigned officers' training days and days off. Police Officers shall be available to testify as necessary in Dardenne Prairie Municipal court.

8. The St. Charles County Department of Emergency Communications will provide law enforcement warrant entries and maintenance of Municipality's warrant file and copies of reports on arrests on a schedule agreed to between the Chief of Police and Municipality. The St. Charles County Police Department will create and maintain records concerning the performance of these services in the same manner as it creates and maintains records for St. Charles County. So long as St. Charles County Police Officers are contracted for as the exclusive principal municipal patrol and response officers for the Municipality, there will be no additional cost for the items listed in Section III, subsection A.6 of the Agreement.

9. As between the parties hereto, the Municipality is not responsible for defense of claims against the Police Department or County or personnel providing services under this Agreement, and insofar as either party is legally responsible for such defense, it is the County. St. Charles County will provide legal representation, defense, and indemnification of its Police Officers as set forth in Chapter 105 of the Ordinances of St. Charles County, Missouri, and other services provided pursuant to this Agreement. This provision shall not be understood as waiving the sovereign immunity by either party for conduct which the other party is responsible by law. This provision is not for the benefit of personnel or any other third party.

10. The Police Department shall provide all necessary training to such Police Officers and other officers, including hand-gun and rifle practice and qualification days, Peace Officer

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Standards and Training continuing educations hours required for a law enforcement officer to maintain his/her license and/or certifications required by law, and twelve (12) weeks of field training if necessary.

11. The Police Department shall have the right and duty of the day-to-day operation of the law enforcement patrol and response services and Municipality shall have no right to direct such operations. Municipality shall direct any concerns or requests to the Chief of Police or his designee and shall not provide instruction or orders to Police Officers or other Police Department personnel directly. The County does not relinquish any of its otherwise existing control or ability to monitor, supervise, or discipline its employees by virtue of entering into this Agreement. Each officer or employee who may perform services as a result of this Agreement still must adhere to the established orders, policies and procedures of the County.

12. Municipal violations of City of Dardenne Prairie ordinances shall be written to City of Dardenne Prairie Municipal Court. The Municipality and County agree that during times when officers assigned to the Municipality are dispatched outside the Municipality, the time outside the Municipality will be restored on that shift or on another shift. The County will promptly notify the Municipality of extraordinary incidents, or accidents involving serious injury or death.

13. The Police Department shall provide Municipality with law enforcement activity and crime reporting and statistical analysis. This will involve the segregation of Municipality's law enforcement activity and crime data, trends, and statistics, and monthly reports to the Municipality highlighting any such criminal activities or trends. A representative of the Police Department shall be available to attend meetings of the governing body of the Municipality, once per month, to provide brief summary and analysis of the activities and crime reports. The Chief of Police may

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invite elected officials of the Municipality and/or members of the community to tour St. Charles County police facilities, and meet with police personnel annually.

14. The Police Department shall provide Municipality with a quarterly article for the Municipality's newsletter and/or social media, including tips, trends, etc. unique or pertinent to the community. Further, the Police Department shall provide a profile of the police officer(s) assigned to perform patrol services to the Municipality for inclusion in said newsletter and/or social media.

15. The Police Department shall coordinate with the Municipality to develop a mutually agreed upon list of public festivals and/or special events and ensure that a representative of the Police Department is available to attend. Further, the Police Department shall, upon request by the Municipality and upon reasonable notice, make available a representative of the Police Department to attend subdivision Homeowners' Association meetings.

16. So long as St. Charles County Police Officers are contracted for as the exclusive principal municipal patrol and response officers for the Municipality, the County shall, by agreement with the school district, provide a dedicated School Resource Officer to public schools within the Municipality without any additional cost to the Municipality.

B. Obligations of the Municipality:

The Municipality shall:

1. Agree that the Mayor of Municipality or his/her designee shall be available to meet at least quarterly with the Chief of Police or his designee, or as needed.
2. Agree that the Police Department shall have the right and duty of the day-to-day operation of law enforcement patrol and response and Municipality shall have no right to direct law enforcement operations.

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3. Agree that the City Administrator of the Municipality, or the Mayor in his absence, shall direct any concerns or requests to the Chief of Police or his designee and shall not provide instruction or orders to Police Department staff or Police Officers directly. The Chief of Police's designee is the Shift Supervisor unless written notice is provided otherwise by the Chief of Police to the Municipality.
 4. Provide copies of Municipality's ordinances and sufficient summons books throughout the year for the assigned Police Officers.
 5. Provide a designated area at City Hall for Police Officers to use to complete reports, make follow-up calls, and complete other tasks ancillary to their work in Municipality.
 6. As provided in Addendum to Police Services Contract attached to and incorporated in this Agreement, protect from interference any microwave paths of the St. Charles County Digital P25 Land Mobile Radio Microwave System, if those paths are within Municipality's jurisdiction.
 7. The Municipality agrees to participate in the St. Charles County Regional Drug Task Force ("SCCRDTF"). The Municipality also agrees that the voting representative to the SCCRDTF Board of Governors will be the St. Charles County Police Department command rank officer with supervisory responsibility for the officers assigned under the terms of this agreement. The Municipality further agrees that a Five Hundred Dollar contribution shall be made annually to assist with the operation of the SCCRDTF, said contribution to be taken from the increase in percentage of the fees addressed by Section V, subsection C.
- C. All law enforcement services and Support Services shall be according to Police Department protocols, which shall be available in written form to Municipality, upon request.

Section IV: Limitations

- A. This Agreement is not assignable by either party. The rights and privileges created and granted by this Agreement to provide the Law Enforcement Services are to be exercised solely by County and Municipality.
- B. Municipality has no authority to bind or obligate County without prior written approval of County.

Section V: Term of the Contract and Fees

- A. County and Municipality enter into this Agreement for a term covering the period of January 1, 2023 through December 31, 2025. County will begin services only upon payment of the amount for 2023.
- B. County and Municipality have reached agreement and understand that the Agreement calls for County to employ two (2) Officers and dedicate such personnel to Municipality. In that the Agreement thus binds the County to the hiring and retention of additional Merit System personnel, the Agreement is intended to be ongoing. Municipality therefore agrees that at all times it is, and intends to be, responsible for the cost of those personnel during the entire term of any fiscal year in which County has entered into performance. To that end, Municipality agrees that should it cancel the Agreement during any year, County shall retain the remainder of that year's contract amount as liquidated damages for that year. If cancellation occurs on or before December 1, the contract shall be null and void for the remaining fiscal years and no amount shall be due and owing in the remaining fiscal year(s). However, if Municipality has already paid the amount due as required herein, County shall retain the remainder of that year's contract amount as liquidated damages, and if Municipality has failed to pay the amount in full by December 31st of the previous year as called for by the contract, such amount shall be deducted from any prepayment to County

and Municipality shall be liable for any unpaid amount. However, should the County cancel the Agreement during any year, the County shall refund any unused portion of that year's contract amount back to the Municipality on a pro-rated basis to the nearest full-month.

C. Municipality agrees to pay **\$389,703.62 per annum for continuous law enforcement services for sixteen (16) hours of patrol per day, seven days per week for Year One of the Agreement, such services requiring two (2) Police Officers** and the acquisition of capital equipment, all as more fully set out in **EXHIBIT 1**. The Municipality agrees to pay the actual cost of law enforcement services for **sixteen (16) hours of patrol per day, seven days per week for Year Two and Year Three, estimated to be \$348,329.72 per annum for Year Two and \$356,445.97 for Year Three** of the Agreement; however, County and Municipality agree that this number is an estimate and Municipality will pay no more nor less than the County's actual cost. The County agrees that it will bill the annual payment by December 1 of the year preceding each contract year and that the Municipality shall pay the amount due by December 31st of the year preceding each contract year.

D. The County agrees that for so long as the County Police Department serves as the exclusive law enforcement patrol and response service for the Municipality of Dardenne Prairie, County will waive the fees associated with the services described in Section III subsections A.6, 8 and 16 of the Agreement.

E. **Legal Contingencies.** The parties expressly recognize and agree that special circumstances and needs may arise which may require adjustments in terms of personnel, equipment, and materials and the additional costs related thereto. The parties agree to negotiate suitable ancillary addendums to the Agreement upon the Municipality giving prior written notice to County and the

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Police Department at least thirty (30) days before November 1 of the calendar year preceding the Contract Year to be amended, and upon the consent of County and the Police Department as to the proposed amended terms. The Police Department shall be the entity to provide such increased level of services if agreed upon. The costs of such service shall be determined in the same manner as the costs set forth in **EXHIBIT 1**.

Section VI: Termination

- A. This Agreement shall be in effect for a term covering the period of January 1, 2023 through December 31, 2025, unless terminated in accordance with the terms hereof. Both Municipality and County enter into the Agreement with the expectation that the Agreement will be renewed after this third three (3) year term, however nothing in this Agreement binds the parties to a longer term.
- B. This Agreement may be terminated without cause by County or Municipality at any time by giving ninety (90) days prior written notice to the other party at the address shown on the signature page in Section VII, subject however, to the liquidated damages set forth in Section V.B. In the event that County cancels the Agreement, no liquidated damages shall be assessed against the Municipality, and the County will refund any unused portion of that year's contract amount back to the Municipality on a pro-rated basis to the nearest full-month.
- C. In the event Municipality fails to pay the annual fee within sixty (60) days of the date of billing, Municipality shall be considered in breach and the County may terminate this Agreement for cause on ten (10) days' written notice and make demand for its liquidated damages.
- D. Notwithstanding any other provision of the Agreement to the contrary, if County provides notice to Municipality that the cost of the Agreement for Year Two or Year Three are to exceed the estimated costs as provided in Section V, subsection C, of the Agreement by more or equal to three percent (3%) of the estimated cost for that respective Contract Year, Municipality may

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terminate the Agreement within sixty (60) days of receipt of said notice but not later than December 15th of the calendar year next preceding the Contract Year to which the notice applies, whichever is later. County shall provide the notice of costs by November 1 of the preceding year. Should Municipality elect to terminate the Agreement pursuant to this Section within the time provided, then no amount shall be due and owing to the County, including but not necessarily limited to any amounts or liquidated damages that would have otherwise been owed to the County pursuant to Section V, subsection B.

Section VII: Notices

Any notice provided for or permitted pursuant to the terms of this Agreement shall be served by delivering same to the party to receive notice either by one or more of the following methods: hand delivery, e-mail or facsimile transmission, or certified or registered United States mail, return receipt requested. All notices shall be delivered, transmitted by e-mail or fax or mailed pursuant to the following instructions:

If to County:

County Executive Steve Ehlmann
Executive Office Building
100 North Third Street, Suite 318
St. Charles, Missouri 63301
E-mail: Executive@sccmo.org

with copies to:

Chief of Police
101 Sheriff Dierker Court O'Fallon, MO 63366
E-mail: Chief@sccmo.org

and

County Counselor
Executive Office Building
100 North Third Street, Suite 216
St. Charles, Missouri 63301
E-mail: Counselor@sccmo.org

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If to Municipality:

Mayor

City of Dardenne Prairie

2032 Hanley Road

Dardenne Prairie, Missouri 63368

Facsimile number: (636) 441-8495

Notice served by e-mail, facsimile, or personal delivery shall be deemed delivered and received upon actual receipt which in the case of service by facsimile transmission may be proved by reference to the sender's printed facsimile transmission report, verified by affidavit of the operator, and in the case of personal delivery by the affidavit of the person or representative of the company effecting delivery. Notice of service by mail shall be deemed delivered on the second day following deposit of the notice in the United States Postal Service system as reflected on the certified or registered mail receipt.

ADDENDUM TO POLICE SERVICES CONTRACT

Microwave Path Protection. The parties to this Agreement as well as all Participating Jurisdictions in a certain Intergovernmental Agreement for the Construction, Operation, Ownership and Maintenance of the St. Charles County Digital P25 Land Mobile Radio Microwave System for Public Safety and Emergency Communications executed in or after October 2013 (“Radio Microwave Agreement”) have a common interest in protecting that Radio Microwave System’s microwave transmission paths from interference. To that end, each party to this Agreement shall:

- A. Ensure, if and when it erects facilities of its own, that those facilities shall not interfere with microwave paths employed by the System; and
- B. To the extent permitted by law and subject to it not constituting a taking under Article I, Section 26 of the Missouri Constitution or the Fifth Amendment to the Constitution of the United States of America:
 1. Adopt:
 - a. An ordinance, order or other regulation substantially similar to Chapter 416, Ordinances of St. Charles County, Missouri (“OSCCMo”), “Noninterference with St. Charles County’s Emergency Microwave Communications System,” for the purpose of; and/or
 - b. Such other building and/or zoning regulations, procedures and/or policies pursuant to applicable law that are reasonably calculated to protect the System’s microwave transmission paths from interference by tall structures; and
 2. Upon receiving any application for a permit or other approval to erect a structure at least eighty (80) feet in height (unless applicable zoning regulations provide for a lower height) beneath a known microwave transmission path of the System as mapped on the County’s GIS

mapping system at the time of the submission of any such application, refer that application to the Emergency Communications System Manager of St. Charles County (“System Manager”) for a written determination of detrimental impact or no detrimental impact upon any microwave path of the System due to the proposed structure, with the preliminary and final findings of detrimental impact or no detrimental impact by the County’s System Manager following the procedures set forth in Chapter 416, OSCCMo, such Chapter 416, OSCCMO, being incorporated by reference as though fully set forth herein; provided however, for any application for permit or approval referred by the Participating Jurisdiction, should the System Manager fail to provide findings of detrimental impact or no detrimental impact within ninety (90) days of submittal of such application to the System Manager by the Participating Jurisdiction, then the Participating Jurisdiction may deem such failure as a finding of no detrimental impact; and

3. Make reasonable efforts to negotiate with a permit applicant for the mitigation of any finding of detrimental impact upon a microwave path of the System due to the applicant’s proposed structure, in which negotiations:

a. The party shall secure County’s access to any System Infrastructure (as defined in the above mentioned Radio Microwave Agreement) to be constructed, installed and dedicated or conveyed to County; and

b. Municipality and County by and through its System Manager shall consult and cooperate with one another to ensure mitigation of any detrimental impact identified pursuant to Section B.2 of this Addendum.

[Remainder of page left intentionally blank]

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WHEREFORE, the parties hereto have executed this Agreement and Addendum, with the effective date of the day and year last written below.

CITY OF DARDENNE PRAIRIE,
MISSOURI

ST. CHARLES COUNTY, MISSOURI

Mayor

Steve Ehlmann, County Executive

Date

Date

ATTEST:

RECOMMENDED BY:

City Clerk

Kurt Frisz, Chief of Police

Date

ATTEST:

Brenda Hinton, County Registrar

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF DARDENNE PRAIRIE, MISSOURI,
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A
MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION AND
THE CITY OF DARDENNE PRAIRIE FOR A SURFACE
TRANSPORTATION BLOCK GRANT (STBG)-URBAN PROGRAM
AGREEMENT TO FUND THE TOWN SQUARE AVENUE PROJECT**

WHEREAS, Sections 70.220 and 70.230, RSMo., as amended, authorize municipalities and political subdivisions to contract and cooperate with a duly authorized agency of this state for the planning, development, or construction of any public improvement; and

WHEREAS, the Board of Aldermen of the City of Dardenne Prairie, Missouri (the "City"), desires to construct certain improvements which involve resurfacing, pedestrian improvements and bicyclist improvements along Town Square Avenue using STBG funding (the "Project"); and

WHEREAS, the total cost of the Project is estimated to be \$723,614.00 (the "Project Cost"); and

WHEREAS, to obtain the federal funds for the Project through the Missouri Highways and Transportation Commission, the City is required to execute a Surface Transportation Block Grant (STBG)-Urban Program Agreement (the "Agreement") with the Missouri Highways and Transportation Commission; and

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF DARDENNE PRAIRIE, MISSOURI, AS FOLLOWS:

SECTION 1. That the form, terms, and provisions of the Agreement by and between the Missouri Highways and Transportation Commission and the City of Dardenne Prairie, Missouri, attached hereto, marked as Exhibit A, and incorporated by reference herein, be and they hereby are approved and the City Administrator is hereby authorized, empowered and directed to further negotiate, execute, acknowledge, deliver and administer on behalf of the City such Agreement in substantially the form attached hereto. The City Clerk is hereby authorized and directed to attest to the Agreement and other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of the Agreement and this Ordinance.

SECTION 2. That the City Administrator is hereby further authorized and directed, on behalf of and in the name of the City, to agree to do any and all other acts and things and to execute and deliver any and all other documents, instruments and certificates, all as may be necessary and appropriate to consummate the above mentioned Agreement, and to perform all of the terms, provisions and conditions of the Agreement. Any and all acts which the City Administrator may

do or perform in conformance with the powers conferred upon them by this Ordinance are hereby expressly authorized, approved, ratified and confirmed.

SECTION 3. Severability Clause: If any term, condition, or provision of this Ordinance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective and each and every remaining provision hereof shall be valid and shall be enforced to the fullest extent permitted by law, it being the intent of the Board of Aldermen that it would have enacted this Ordinance without the invalid or unenforceable provisions. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding.

SECTION 4. Effective Date: This Ordinance shall be in full force and take effect from and after its final passage and approval.

SECTION 5. Savings: Nothing contained herein shall in any manner be deemed or construed to alter, modify, supersede, supplant or otherwise nullify any other Ordinance of the City or the requirements thereof whether or not relating to or in any manner connected with the subject matter hereof, unless expressly set forth herein.

Read two (2) times and passed this _____ day of _____, 2022.

As Presiding officer and as Mayor

Approved this _____ day of _____, 2022.

Mayor

Attest: _____
City Clerk

Exhibit A

CCO Form: FS11
Approved: 07/96 (KMH)
Revised: 03/17 (MWH)
Modified: 10/22 (MWH)

CFDA Number: CFDA #20.205
CFDA Title: Highway Planning and Construction
Award name/number: STBG-5407(620)
Award Year: 2023
Federal Agency: Federal Highway Administration, Department of Transportation

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION SURFACE TRANSPORTATION BLOCK GRANT (STBG)-URBAN PROGRAM AGREEMENT

THIS STBG-URBAN AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission") and the City of Dardenne Prairie, St. Charles County, Missouri (hereinafter, "City").

WITNESSETH:

WHEREAS, the Infrastructure Investment and Jobs Act (IIJA) 23 U.S.C. §133, authorizes a Surface Transportation Block Grant Program (STBG) to fund transportation related projects; and

WHEREAS, the City desires to construct certain improvements, more specifically described below, using such STBG funding; and

WHEREAS, those improvements are to be designed and constructed in compliance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations in this Agreement, the parties agree as follows:

(1) **PURPOSE:** The purpose of this Agreement is to grant the use of STBG funds to the City. The improvement contemplated by this Agreement and designated as Project STBG-5407(620) involves:

Resurfacing, pedestrian improvements and bicyclist improvements.

The City shall be responsible for all aspects of the construction of the improvement.

(2) LOCATION: The contemplated improvement designated as Project STBG-5407(620) by the Commission is within the city limits of Dardenne Prairie, Missouri. The general location of the improvement is shown in an attachment hereto marked "Exhibit A" and incorporated herein by reference. Proposed improvements include milling and replacing the asphalt pavement on the traveled way along with upgrades in the pedestrian and high visibility crosswalks on Town Square Road from Technology Drive east to Winghaven Centre.

(3) REASONABLE PROGRESS POLICY: The project as described in this agreement is subject to the reasonable progress policy set forth in the Local Public Agency (LPA) Manual and the final deadline specified in Exhibit B attached hereto and incorporated herein by reference. In the event, the LPA Manual and the final deadline within Exhibit B conflict, the final deadline within Exhibit B controls. If the project is within a Transportation Management Area that has a reasonable progress policy in place, the project is subject to that policy. If the project is withdrawn for not meeting reasonable progress, the City agrees to repay the Commission for any progress payments made to the City for the project and agrees that the Commission may deduct progress payments made to the City from future payments to the City.

(4) LIMITS OF SYSTEM: The limits of the surface transportation system for the City shall correspond to its geographical area as encompassed by the urban boundaries of the City as fixed cooperatively by the parties subject to approval by the Federal Highway Administration (FHWA).

(5) ROUTES TO BE INCLUDED: The City shall select the high traffic volume arterial and collector routes to be included in the surface transportation system, to be concurred with by the Commission, subject to approval by the FHWA. It is understood by the parties that surface transportation system projects will be limited to the said surface transportation system, but that streets and arterial routes may be added to the surface transportation system, including transfers from other federal aid systems.

(6) INVENTORY AND INSPECTION: The City shall:

(A) Furnish annually, upon request from the Commission or FHWA, information concerning conditions on streets included in the STBG system under local jurisdiction indicating miles of system by pavement width, surface type, number of lanes and traffic volume category.

(B) Inspect and provide inventories of all bridges on that portion of the federal-aid highway systems under the jurisdiction of the City in accordance with the Federal Special Bridge Program, as set forth in 23 U.S.C. §144, and applicable amendments or regulations promulgated thereunder.

(7) CITY TO MAINTAIN: Upon completion of construction of this improvement, the City shall accept control and maintenance of the improved street and shall thereafter keep, control, and maintain the same as, and for all purposes, a part of the City street system at its own cost and expense and at no cost and expense whatsoever to the Commission. Any traffic signals installed on highways maintained by the Commission will be turned over to the Commission upon completion of the project for maintenance. All obligations of the Commission under this Agreement shall cease upon completion of the improvement.

(8) INDEMNIFICATION:

(A) To the extent allowed or imposed by law, the City shall defend, indemnify and hold harmless the Commission, including its members and the Missouri Department of Transportation (MoDOT or Department) employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the City's wrongful or negligent performance of its obligations under this Agreement.

(B) The City will require any contractor procured by the City to work under this Agreement:

1. To obtain a no cost permit from the Commission's district engineer prior to working on the Commission's right-of-way, which shall be signed by an authorized contractor representative (a permit from the Commission's district engineer will not be required for work outside of the Commission's right-of-way); and

2. To carry commercial general liability insurance and commercial automobile liability insurance from a company authorized to issue insurance in Missouri, and to name the Commission, and MoDOT and its employees, as additional named insureds in amounts sufficient to cover the sovereign immunity limits for Missouri public entities as calculated by the Missouri Department of Insurance, Financial Institutions and Professional Registration, and published annually in the Missouri Register pursuant to Section 537.610, RSMo. The City shall cause insurer to increase the insurance amounts in accordance with those published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(C) In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitution or law.

(9) CONSTRUCTION SPECIFICATIONS: Parties agree that all construction under the STBG for the City will be constructed in accordance with current MoDOT design criteria/specifications for urban construction unless separate standards for the surface

transportation system have been established by the City and the Commission subject to the approval of the FHWA.

(10) FEDERAL-AID PROVISIONS: Because responsibility for the performance of all functions or work contemplated as part of this project is assumed by the City, and the City may elect to construct part of the improvement contemplated by this Agreement with its own forces, a copy of Section II and Section III, as contained in the United States Department of Transportation Form Federal Highway Administration (FHWA) 1273 "Required Contract Provisions, Federal-Aid Construction Contracts," is attached and made a part of this Agreement as Exhibit C. Wherever the term "the contractor" or words of similar import appear in these sections, the term "the City" is to be substituted. The City agrees to abide by and carry out the condition and obligations of "the contractor" as stated in Section II, Equal Opportunity, and Section III, Nonsegregated Facilities, as set out in Form FHWA 1273.

(11) ACQUISITION OF RIGHT OF WAY: No acquisition of additional right of way is anticipated in connection with Project STBG-5407(620) or contemplated by this Agreement.

(12) REIMBURSEMENT: The cost of the contemplated improvements will be borne by the United States Government and by the City as follows:

(A) Any federal funds for project activities shall only be available for reimbursement of eligible costs which have been incurred by City. Any costs incurred by City prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs. All federally funded projects are required to have a project end date. Any costs incurred after the project end date are not eligible for reimbursement. The federal share for this project will be 80 percent not to exceed \$723,614. The calculated federal share for seeking federal reimbursement of participating costs for the herein improvements will be determined by dividing the total federal funds applied to the project by the total participating costs. Any costs for the herein improvements which exceed any federal reimbursement or are not eligible for federal reimbursement shall be the sole responsibility of City. The Commission shall not be responsible for any costs associated with the herein improvement unless specifically identified in this Agreement or subsequent written amendments.

(B) The total reimbursement otherwise payable to the City under this Agreement is subject to reduction, offset, levy, judgment, collection or withholding, if there is a reduction in the available federal funding, or to satisfy other obligations of the City to the Commission, the State of Missouri, the United States, or another entity acting pursuant to a lawful court order, which City obligations or liability are created by law, judicial action, or by pledge, contract or other enforceable instrument. Any costs incurred by the City prior to authorization from FHWA and notification to proceed from the Commission are not reimbursable costs.

(13) PERMITS: The City shall secure any necessary approvals or permits from the Federal Government and the State of Missouri as required to permit the construction and maintenance of the contemplated improvements.

(14) TRAFFIC CONTROL: The plans shall provide for handling traffic with signs, signal and marking in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).

(15) WORK ON STATE RIGHT OF WAY: If any contemplated improvements for Project STBG-5407(620) will involve work on the state's right of way, the City will provide reproducible final plans to the Commission relating to such work.

(16) DISADVANTAGED BUSINESS ENTERPRISES (DBEs): At time of processing the required project agreements with the FHWA, the Commission will advise the City of any required goals for participation by DBEs to be included in the City's proposal for the work to be performed. The City shall submit for Commission approval a DBE goal or plan. The City shall comply with the plan or goal that is approved by the Commission and all requirements of 49 C.F.R. Part 26, as amended.

(17) NOTICE TO BIDDERS: The City shall notify the prospective bidders that disadvantaged business enterprises shall be afforded full and affirmative opportunity to submit bids in response to the invitation and will not be discriminated against on grounds of race, color, sex, or national origin in consideration for an award.

(18) PROGRESS PAYMENTS: The City may request progress payments be made for the herein improvements as work progresses but not more than once every two weeks. Progress payments must be submitted monthly. All progress payment requests must be submitted for reimbursement within 90 days of the project completion date for the final phase of work. The City shall repay any progress payments which involve ineligible costs.

(19) PROMPT PAYMENTS: Progress invoices submitted to MoDOT for reimbursement more than thirty (30) calendar days after the date of the vendor invoice shall also include documentation that the vendor was paid in full for the work identified in the progress invoice. Examples of proof of payment may include a letter or e-mail from the vendor, lien waiver or copies of cancelled checks. Reimbursement will not be made on these submittals until proof of payment is provided. Progress invoices submitted to MoDOT for reimbursement within thirty (30) calendar days of the date on the vendor invoice will be processed for reimbursement without proof of payment to the vendor. If the City has not paid the vendor prior to receiving reimbursement, the City must pay the vendor within two (2) business days of receipt of funds from MoDOT.

(20) OUTDOOR ADVERTISING: The City further agrees that the right of way provided for any STBG improvement will be held and maintained inviolate for public highway or street purposes, and will enact and enforce any ordinances or regulations

necessary to prohibit the presence of billboards or other advertising signs or devices and the vending or sale of merchandise on such right of way, and will remove or cause to be removed from such right of way any sign, private installation of any nature, or any privately owned object or thing which may interfere with the free flow of traffic or impair the full use and safety of the highway or street.

(21) FINAL AUDIT: The Commission will perform a final audit of project costs. The United States Government shall reimburse the City, through the Commission, any monies due. The City shall refund any overpayments as determined by the final audit.

(22) AUDIT REQUIREMENT: If the City expend(s) seven hundred fifty thousand dollars (\$750,000) or more in a year in federal financial assistance it is required to have an independent annual audit conducted in accordance with 2 CFR Part 200. A copy of the audit report shall be submitted to MoDOT within the earlier of thirty (30) days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period. Subject to the requirements of 2 CFR Part 200, if the City expend(s) less than seven hundred fifty thousand dollars (\$750,000) a year, the City may be exempt from auditing requirements for that year but records must be available for review or audit by applicable state and federal authorities.

(23) FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT OF 2006: The City shall comply with all reporting requirements of the Federal Funding Accountability and Transparency Act (FFATA) of 2006, as amended. This Agreement is subject to the award terms within 2 C.F.R. Part 170.

(24) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(25) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The City shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(26) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representatives of the City and the Commission.

(27) COMMISSION REPRESENTATIVE: The Commission's St. Louis District Engineer is designated as the Commission's representative for the purpose of administering the provisions of this Agreement. The Commission's representative may designate by written notice other persons having the authority to act on behalf of the Commission in furtherance of the performance of this Agreement.

(28) NOTICES: Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given three (3) days after delivery

by United States mail, regular mail postage prepaid, or upon receipt by personal or facsimile delivery, addressed as follows:

(A) To the City:
2032 Hanley Road
Dardenne Prairie, MO 63368

(B) To the Commission:
1590 Woodlake Drive
Chesterfield, MO 63017

or to such other place as the parties may designate in accordance with this Agreement. To be valid, facsimile delivery shall be followed by delivery of the original document, or a clear and legible copy thereof, within three (3) business days of the date of facsimile transmission of that document.

(29) NONDISCRIMINATION ASSURANCE: With regard to work under this Agreement, the City agrees as follows:

(A) Civil Rights Statutes: The City shall comply with all state and federal statutes relating to nondiscrimination, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. §2000d and §2000e, et seq.), as well as any applicable titles of the "Americans with Disabilities Act" (42 U.S.C. §12101, et seq.). In addition, if the City is providing services or operating programs on behalf of the Department or the Commission, it shall comply with all applicable provisions of Title II of the "Americans with Disabilities Act".

(B) Administrative Rules: The City shall comply with the administrative rules of the United States Department of Transportation relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (49 C.F.R. Part 21) which are herein incorporated by reference and made part of this Agreement.

(C) Nondiscrimination: The City shall not discriminate on grounds of the race, color, religion, sex, disability, national origin, age or ancestry of any individual in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The City shall not participate either directly or indirectly in the discrimination prohibited by 49 C.F.R. §21.5, including employment practices.

(D) Solicitations for Subcontracts, Including Procurements of Material and Equipment: These assurances concerning nondiscrimination also apply to subcontractors and suppliers of the City. These apply to all solicitations either by competitive bidding or negotiation made by the City for work to be performed under a subcontract including procurement of materials or equipment. Each potential subcontractor or supplier shall be notified by the City of the requirements of this

Agreement relative to nondiscrimination on grounds of the race, color, religion, sex, disability or national origin, age or ancestry of any individual.

(E) Information and Reports: The City shall provide all information and reports required by this Agreement, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Commission or the United States Department of Transportation to be necessary to ascertain compliance with other contracts, orders and instructions. Where any information required of the City is in the exclusive possession of another who fails or refuses to furnish this information, the City shall so certify to the Commission or the United States Department of Transportation as appropriate and shall set forth what efforts it has made to obtain the information.

(F) Sanctions for Noncompliance: In the event the City fails to comply with the nondiscrimination provisions of this Agreement, the Commission shall impose such contract sanctions as it or the United States Department of Transportation may determine to be appropriate, including but not limited to:

1. Withholding of payments under this Agreement until the City complies; and/or
2. Cancellation, termination or suspension of this Agreement, in whole or in part, or both.

(G) Incorporation of Provisions: The City shall include the provisions of paragraph (29) of this Agreement in every subcontract, including procurements of materials and leases of equipment, unless exempted by the statutes, executive order, administrative rules or instructions issued by the Commission or the United States Department of Transportation. The City will take such action with respect to any subcontract or procurement as the Commission or the United States Department of Transportation may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that in the event the City becomes involved or is threatened with litigation with a subcontractor or supplier as a result of such direction, the City may request the United States to enter into such litigation to protect the interests of the United States.

(30) ACCESS TO RECORDS: The City and its contractors must maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at no charge to the FHWA and the Commission and/or their designees or representatives during the period of this Agreement and any extension, and for a period of three (3) years after the date on which the City receives reimbursement of their final invoice from the Commission.

(31) CONFLICT OF INTEREST: The City shall comply with conflict of interest policies identified in 23 CFR 1.33. A conflict of interest occurs when an entity has a financial or personal interest in a federally funded project.

(32) MANDATORY DISCLOSURES: The City shall comply with 2 CFR 200.113 and disclose, in a timely manner, in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date last written below.

Executed by the City on _____(DATE).

Executed by the Commission on _____(DATE).

**MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION**

Title _____

ATTEST:

Secretary to the Commission

Approved as to Form:

Commission Counsel

CITY OF DARDENNE PRAIRIE

By _____
Title _____

ATTEST:

By _____
Title _____

Approved as to Form:

By _____
Title _____

Ordinance No:_____

Exhibit A - Location of Project



Exhibit B – Project Schedule

Project Description: STBG-5407(620) Town Square Road

PROJECT DEVELOPMENT SCHEDULE			
<i>Note: Many steps are now concurrent</i>			
Activity Description	Start Date (MM/YYYY)	Finish Date (MM/YYYY)	Time Frame (Months)
Receive notification letter	10/2022	10/2022	1
Execute agreement (project sponsor and DOT)	11/2022	02/2023	4
Engineering services contract submitted and approved*	03/2023	10/2023	8
Obtain environmental clearances (106, CE2, T&E, etc.)	10/2023	12/2023	3
Public meeting/hearing	12/2023	02/2024	3
Develop and submit preliminary plans	10/2023	05/2024	8
Preliminary plans approved	05/2024	07/2024	3
Develop and submit right-of-way plans			
Review and approval of right-of-way plans			
Submit and receive approval for notice to proceed for right-of-way acquisition (A-Date)*			
Right-of-way acquisition			
Utility coordination	07/2024	08/2024	2
Develop and submit PS&E	07/2024	12/2024	6
District approval of PS&E/advertise for bids*	01/2025	02/2025	2
Submit and receive bids for review and approval	02/2025	04/2025	3
Project implementation/construction	04/2025	11/2025	8
* Finish date must match fiscal year for each milestone shown in bold text.			

*Note: the dates established in the schedule above will be used in the applicable ESC between the sponsor agency and consultant firm.

**Schedule dates are approximate as the project schedule will be actively managed and issues mitigated through the project delivery process. The Award Date or Planning Study Date deliverable is not approximate and requires request to adjust.

Exhibit C - Required Contract Provisions

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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

ATTACHMENTS

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

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The 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.

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.

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, 29 CFR part 3;

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

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

(4) The falsification of any of the above certifications may subject the 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 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 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 - 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.