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EXHIBIT 2

PHASE DEVELOPER OWNERSHIP

Entity	Percentage of ownership of the Phase Developer

EXHIBIT 3

INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES

1. **Contract Manager**

[●]

2. **Phase Developer Representative**

[●]

EXHIBIT 4
INTENTIONALLY OMITTED

EXHIBIT 5

PREDEVELOPMENT MILESTONES AND DEADLINES

Predevelopment Work Milestone	Predevelopment Milestone Deadline
A complete and compliant Committed Section Proposal for the First Section is delivered to MDOT	May 27, 2022
Financial Close of the Section P3 Agreement for the First Section is achieved	October 31, 2022
Complete and compliant Committed Section Proposals for all Sections in Phase South A have been delivered to MDOT	[●] ¹
Financial Close of all Sections in Phase South A is achieved	[●] ²
Financial Close of all Sections in Phase South B is achieved	[●] ³
Financial Close of all Sections in Phase North is achieved	Expiry of the Term.

¹ This will be populated based on the schedule submitted in the Proposal, plus 12 months.

² This will be populated based on the schedule submitted in the Proposal, plus 12 months.

³ This will be populated based on the schedule submitted in the Proposal, plus 12 months.

EXHIBIT 6

PREDEVELOPMENT WORK REQUIREMENTS

[Refer to separate attachment]

EXHIBIT 7

COMMITTED SECTION PROPOSAL

1. COMMITTED SECTION PROPOSAL

1.1 The Committed Section Proposal

The Committed Section Proposal must include the following:

- (a) a Committed Section Proposal letter from the Phase Developer and Section Developer in the form of Attachment A, attaching a copy of the Section P3 Agreement (including all exhibits to the Section P3 Agreement (including the Section Technical Provisions));
- (b) commitment letters from the Lenders and Lead Underwriters, in accordance with Section 1.2 (Financial Institutions Providing Debt Financing);
- (c) commitment letters and other supporting information from the CSP Equity Members in accordance with Section 1.3 (Details of Equity Source and Equity Member Letters);
- (d) financial statements demonstrating the financial strength of the CSP Equity Members, Key Contractors, and guarantors (if any), in accordance with Section 1.4 (Financial Strength of Members), including the Financial Officer's Certificates in the form of Attachment B;
- (e) a financial advisor letter accordance with Section 1.5 (Financial Advisor Letter);
- (f) an Initial Base Case Financial Model in accordance with Section 1.6 (Initial Base Case Financial Model);
- (g) a financial model audit in accordance with Section 1.7 (Financial Model Audit);
- (h) a traffic and revenue report in accordance with Section 1.8 (Traffic and Revenue Report);
- (i) an opinion letter in support of the traffic and revenue report in accordance with Section 1.9 (Opinion Letter Supporting Traffic and Revenue Report);
- (j) two investment grade ratings in accordance with Section 1.10 (Investment Grade Ratings);
- (k) a Lenders technical advisor's report in accordance with Section 1.11 (Lenders Technical Advisor's Report);
- (l) a copy of the draft TIFIA loan agreement term sheet in accordance with Section 1.12 (Draft TIFIA Loan Agreement);
- (m) a copy of the full form D&C Contract for the Section in accordance with Section 1.13 (Form of D&C Contract);
- (n) a copy of the full form tolling, operations, and maintenance contracts (as applicable) for the Section in accordance with Section 1.14 (Form of Tolling, Operations, and Maintenance Contracts);
- (o) the amount of the Initial Upfront Payment in accordance with Section 1.15 (Initial Upfront Payment);

- (p) the amount of any cash closing fee that will be payable in accordance with Section 1.18 (Payment of Developer Closing Fee Percentage);
- (q) specify the Section Proposal Equity IRR in accordance with Section 1.19 (Section Proposal Equity IRR);
- (r) transit commitments in accordance with Section 1.20 (Transit Commitments);
- (s) the Section Technical Proposal in accordance Section 1.15 (Section Technical Provisions and Section Technical Proposal) of Exhibit 6 (Predevelopment Work Requirements);
- (t) the safety program for the D&C Contractor in accordance with Section 1.21 (Safety Requirements of D&C Contractor);
- (u) an Operations and Maintenance Plan that satisfies the requirements of Article 25 of Exhibit 6 (Predevelopment Work Requirements);
- (v) the concept design for the Section to the level of completion as agreed with MDOT. The concept design shall include:
 - (i) the proposed limits of the Section Work and Limit of Disturbance, all critical existing and proposed features of the Section (including impacts associated with the Section Work) such as Permanent ROW, environmental resources, hazardous materials, utilities, and all major elements for each engineering discipline;
 - (ii) the Section Schedule; and
 - (iii) a list (including their status) of all Governmental Approvals and third party approvals required.
- (w) details of the Section Key Personnel in accordance with Section 1.22 (Section Key Personnel);
- (x) commitment letters from Eligible Security Issuers for the performance and payment security under the Section P3 Agreement in accordance with Section 1.23 (Performance Security under Section P3 Agreement);
- (y) a Buy America certification from the Section Developer in the form of Attachment C;
- (z) a proposal affidavit from the Phase Developer and Section Developer, each Key Contractor, and guarantors (if any) in the form of Attachment D;
- (aa) a non-collusion affidavit from the Section Developer, each CSP Equity Member, each Key Contractor, and guarantors (if any) in the form of Attachment E;
- (bb) a certification regarding the use of contract funds for lobbying from the Section Developer, each Key Contractor, each D&C Contract Member, and each CSP Equity Member in the form of Attachment F;
- (cc) a certification regarding no conflict of interest from the Section Developer in the form of Attachment G;
- (dd) a debarment certification from the Section Developer in the form of Attachment H;

- (ee) an equal employment opportunity certification from the Section Developer in the form of Attachment I;
- (ff) the DBE and MBE documentation from the Section Developer in accordance with Section 1.24 (DBE and MBE Documentation);
- (gg) any other items under Exhibit 6 (Predevelopment Work Requirements) that are to be included in the Committed Section Proposal; and
- (hh) any other items agreed between the Phase Developer and MDOT.

1.2 **Financial Institutions Providing Debt Financing**

- (a) This Section 1.2 provides the requirements for commitment letters with respect to bank financing ("**Bank Debt Financing**") and capital markets financing ("**Bond Financing**") that are included in the MDOT approved Financing Plan.
- (b) With respect to a Bond Financing (except Bond Financing involving a private placement under Regulation D), a letter from a Lead Underwriter agreeing to purchase 100 percent of the volume of bonds to be issued at market prices. If the Section Developer has more than one Lead Underwriter, the aggregate volume commitments of the Lead Underwriters must equal 100 percent of the volume.
- (c) For each Bank Debt Financing and each Bond Financing included in the approved Financing Plan, the Phase Developer shall provide a letter of commitment with a commitment period expiring no earlier than the commitment period of the Committed Section Proposal from each Lender, each Lead Underwriter, or each Placement Agent as the case may be. The letter of commitment must include the following:
 - (i) with respect to a letter of commitment from each Lender, confirmation that:
 - (A) certain due diligence has been completed (including legal, insurance, and technical);
 - (B) the Section P3 Agreement is acceptable in the form attached to the Committed Section Proposal; and
 - (C) final credit approval has been received, subject only to the completion of final credit documents and the satisfaction of customary conditions precedent;
 - (ii) with respect to a letter of commitment from each Lead Underwriter, confirmation that:
 - (A) certain due diligence has been performed (including legal, insurance, and technical);
 - (B) the Section P3 Agreement is acceptable in the form attached to the Committed Section Proposal; and
 - (C) final credit approval has been received, subject only to the completion of final documentation and satisfaction of customary conditions precedent;
 - (iii) with respect to a letter of commitment from a Placement Agent:

- (A) confirmation that certain due diligence has been performed (including legal, insurance, and technical);
 - (B) confirmation that the Section P3 Agreement is acceptable in the form attached to the Committed Section Proposal;
 - (C) confirmation that final credit approval has been received subject only to the completion of final documentation and satisfaction of customary conditions precedent;
 - (D) evidence that the Placement Agent has served as the lead arranger in the past five years on over \$1 billion of infrastructure projects (which may be privately owned or delivered under the public-private partnership framework and may cover transportation, social/accommodations, or other asset types);
 - (E) a copy of a report from BrokerCheck (<http://brokercheck.finra.org/>) for the Placement Agent, if applicable, evidencing the Placement Agent's proper registration and licensing to act in such capacity;
 - (F) confirmation that the private placement is exempt under Section 4(a) of the Securities Act of 1933, as amended, and indicate which exemption is being relied upon; and
 - (G) a list of the purchases of the private placement and each of their commitments;
- (iv) a detailed term sheet that includes the following terms and conditions:
- (A) type and purpose of facility;
 - (B) interest rates (whether fixed or floating, specifying the base rate and applicable margins or spreads with respect to a Bank Debt Financing);
 - (C) amounts in Dollars of the facilities provided;
 - (D) conditions precedent to Financial Close;
 - (E) principal covenants (affirmative and negative);
 - (F) financing security (including guarantees);
 - (G) events of default;
 - (H) structural features;
 - (I) cover ratios;
 - (J) average life of debt;
 - (K) reserve accounts and the funding and other requirements with respect to such accounts;
 - (L) redemption/prepayment features;

- (M) drawdown schedule;
 - (N) capital repayment grace period;
 - (O) repayment schedule and final maturity date;
 - (P) flow of funds;
 - (Q) representations and warranties;
 - (R) any proposed hedging arrangements in relation to interest rate risk;
 - (S) commitment, arrangement, and other fees that are payable; and
 - (T) any other material terms and conditions relevant to the financing;
- (v) a detailed timetable setting out the expected period for negotiation and signing of the debt facilities;
 - (vi) a description of all fees payable to the Lender(s), Lead Underwriter(s), and if applicable Placement Agent(s); and
 - (vii) any other material information that would be relevant to the specific forms of debt finance that are proposed.

1.3 **Details of Equity Source and Equity Member Letters**

- (a) For each CSP Equity Member, the Committed Section Proposal must include an Equity Member Letter, signed by the CSP Equity Member's chief executive officer, chief financial officer, chief investment officer, or equivalent officer.
- (b) The Equity Member Letter must include:
 - (i) the legal name of the CSP Equity Member. In cases where equity is contributed by a fund, the Equity Member Letter must identify the fund managers, the general characteristics of the fund investors, and the percentage of participation;
 - (ii) the amount of funds the CSP Equity Member is to commit, the source, and type of the funds (e.g. shareholder capital and shareholder loans), the timing of the subscription, and any potential risks due to other equity commitments;
 - (iii) the terms and conditions of the subscription, including dividend rights attaching to shares or membership interests, the extent to which funds are committed, and the length of time funds will remain in the project vehicle;
 - (iv) an acknowledgement of §202 of the Act; and
 - (v) evidence of the signatory's authority to sign the Equity Member Letter.
- (c) The Committed Section Proposal shall include sufficient documentation to provide assurance that private equity funding will be in place.
- (d) The Committed Section Proposal must include certified copies of the board minutes or other written evidence of approval of the contents of the Committed Section Proposal by

each CSP Equity Member, together with appropriate evidence of the authorization of the person or body giving the approval.

1.4 **Financial Strength of Members**

The Committed Section Proposal must include financial statements for each CSP Equity Member and Key Contractor (each a "**Member**" and together the "**Members**"), and their guarantors, if any, in accordance with the requirements below.

(a) **Required Financial Statements**

The Committed Section Proposal must include the following financial statements:

- (i) financial statements for each entity's three most recently completed fiscal years (as applicable), audited by a generally recognized certified public accountant firm, or, if audited statements have not been produced, unaudited annual statements accompanied by a letter from the Chief Financial Officer, or equivalent officer, that the unaudited statements are true, accurate, and correct; and
- (ii) any interim financial statements prepared after the latest annual financial statement (e.g. quarterly and half-yearly).

(b) **Inclusions**

The financial statements described in Section 1.4(a) (Required Financial Statements) must include the following:

- (i) an auditor's report for the annual financial statements (unless audited statements have not been produced);
- (ii) balance sheet;
- (iii) income statement;
- (iv) statement of cash flows; and
- (v) footnotes (as available).

(c) **Additional Requirements**

The financial statements described in Section 1.4(a) (Required Financial Statements) must satisfy the following requirements:

- (i) all financial statements must be presented in their native language and, if their native language is a language other than English, an English translation must be provided;
- (ii) all amounts in the financial statements must be presented in their native reported currency;
- (iii) all financial statements must be provided electronically in standard, unrestricted, searchable PDF files; and

- (iv) applicable portions of each entity's financial statements must be provided electronically in standard unlocked Microsoft Excel workbooks using the "Financial Statement Template" provided by MDOT, and as follows:
 - (A) one workbook should be populated with the balance sheet, income statement, and statement of cash flows, for each of the three most recent years and relevant interim period(s) in separate columns, in chronological order, from left to right, in Dollars;
 - (B) if an entity reports financial statements in a currency other than Dollars, the information required in Section 1.4(c)(iv)(A) above must also be provided in a second, separate workbook, in the same format, in the native reported currency; and
 - (C) entities may submit financial statements in an encrypted (password protected) format, provided no non-standard software is required to access it. Entities that elect to protect their financial statements must clearly include the password with their Committed Section Proposal.

(d) **Accounting Principles**

If an entity provides financial statements that are not prepared in accordance with:

- (i) IFRS; or
- (ii) GAAP from a G7 Country (Canada, France, Germany, Italy, Japan, United Kingdom, and the U.S.),

then an explanation of the accounting differences between IFRS or GAAP, and the accounting standards used to produce the audited financial statements must be prepared and submitted by the auditing firm.

(e) **Financial Officer's Certificates**

- (i) The Committed Section Proposal must include a separate Financial Officer's Certificates in the form of Attachment B for each CSP Equity Member, each Key Contractor, and each guarantor (if any), subject to Section 1.4(e)(ii).
- (ii) If a CSP Equity Member, or a Key Contractor has a guarantor, then only one certificate is required from the guarantor and its guaranteed entity.

(f) **Rating**

If a CSP Equity Member, the D&C Contractor, a D&C Contract Member, or the O&M Contractor maintain rated debt, then the Committed Section Proposal must include the latest rating report by the Rating Agency for the CSP Equity Member, D&C Contractor, D&C Contract Member, or O&M Contractor.

1.5 **Financial Advisor Letter**

The Committed Section Proposal must include an opinion letter from the Phase Developer's or Section Developer's financial advisor (or if one has not been appointed as of the date the Committed Section Proposal is submitted, by the Section Developer's chief financial officer or treasurer) indicating that the Financing Plan for the Section is achievable and sufficient to fulfil the commitments set out in the Committed Section Proposal.

1.6 Initial Base Case Financial Model

The Committed Section Proposal shall include an Initial Base Case Financial Model. The format of the Initial Base Case Financial Model is at the discretion of the Phase Developer, but it must comply with the requirements set out in this Section 1.6 (Initial Base Case Financial Model), and must be in the same form as previously reviewed and approved by MDOT as part of the Financing Plan for the Section under Section 1.22 of Exhibit 6 (Predevelopment Work Requirements).

(a) Initial Base Case Financial Model Format Requirements

- (i) The Initial Base Case Financial Model shall be compatible with Microsoft Excel Version 2007 for Windows 7 or later operating system. The file name of the Initial Base Case Financial Model must clearly identify the Initial Base Case Financial Model version and shall change with each successive version of the Initial Base Case Financial Model issued. Where additional Initial Base Case Financial Models based on the same version are issued (for example where the additional Initial Base Case Financial Model is generated by changing input cells only) the file name must reflect that the same version that is being used.
- (ii) The Initial Base Case Financial Model must contain, at a minimum, the following on a title page in a separate worksheet:
 - (A) model name;
 - (B) Phase Developer's name;
 - (C) Section limits;
 - (D) model author;
 - (E) version;
 - (F) date (Initial Base Case Financial Model date and run date);
 - (G) key to formats (for example yellow for inputs); and
 - (H) key to sheet names (for example "Inp" for input sheets, "Calc" for calculation sheets).
- (iii) Each output sheet of each Initial Base Case Financial Model must identify the Initial Base Case Financial Model version and the date of issue.
- (iv) No password protections may be included in the Initial Base Case Financial Model (including password protected macros, or hidden rows, columns, cells, or sheets).
- (v) Each Initial Base Case Financial Model must be formatted to facilitate printing.

(b) Initial Base Case Financial Model Consistency

The Initial Base Case Financial Model must have time periods across the columns and calculations down the rows. This must be consistent in all sheets of the Initial Base Case Financial Model. There are two areas where consistency is most important:

- (i) Columns: a column must be used for the same period in each of its occurrence in model worksheets, with the exception of any additional summary worksheets that the Phase Developer elects to include must be color coded and may only be used for the consolidation of outputs. Any non-summary worksheets that perform calculations must use the same periodicities for each column throughout the model; and
- (ii) Rows: a row must contain only one formula copied across all columns. Exceptions may only be made when appropriate according to modeling best practices, in which case such cells should be marked in a manner noting them as unique formulae.

(c) **Initial Base Case Financial Model Integrity**

All calculations must be coded to provide exactly what they represent (no balancing figures). The use of a macro is acceptable provided it is appropriately documented in the Initial Base Case Financial Model and the Assumptions Book. For the purposes of clarity, the Initial Base Case Financial Model must present all formulas, not simply "pasted values".

(d) **Initial Base Case Financial Model Linearity**

The Initial Base Case Financial Model must calculate in one pass (no circular references).

(e) **Elements of the Initial Base Case Financial Model**

The Initial Base Case Financial Model must have three distinct elements:

- (i) inputs: which must include data and assumptions but no calculations;
- (ii) calculations: individual calculations that support each line of all outputs and reports. There must be no duplication of calculations and input cells must not be hard-coded in calculations sheets; and
- (iii) outputs: no input cells hard-coded in output sheets and no calculations except for simple formulae such as sums and check totals.

(f) **Initial Base Case Financial Model Inputs and Specifications**

The Initial Base Case Financial Model must be developed with reference to the following key inputs and assumptions:

- (i) all milestone dates in the Section P3 Agreement must be met;
- (ii) the Initial Base Case Financial Model must be constructed using, at minimum:
 - (A) monthly periods from Financial Close until Substantial Completion; and
 - (B) semi-annual periods from Substantial Completion until two years after the term of the Section P3 Agreement;
- (iii) all demand and toll rate assumptions must be clearly stated in the Initial Base Case Financial Model with supporting detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book must be sufficient to enable independent verification of individual revenue assumptions. While

aggregate revenue estimates may be used as an input within the Initial Base Case Financial Model, a detailed breakdown, supported by any traffic and revenue studies undertaken by the Phase Developer or Section Developer must be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between demand, toll rates, and toll revenues;

- (iv) the Initial Base Case Financial Model must include certain assumptions related to the investment in the MDTA Notes and the associated interest and payment receipts agreed with MDOT during the Predevelopment Work. Given MDTA's limitation on issuing bonds that mature later than 40 years after the date of issue, the Initial Base Case Financial Model must include certain assumptions associated with interest and principal proceeds over the term of the Section P3 Agreement (i.e. modelled as a 50 year bond, while recognizing that the final maturity of the initial MDTA Notes issuance will be scheduled for an initial 40 year period and that this initial MDTA Notes issuance will be refinanced prior to the final maturity). The Initial Base Case Financial Model must calculate the MDTA Notes purchase and principal and interest receipts assuming the following assumptions:
 - (A) the MDTA Notes will be purchased by the Section Developer at Financial Close;
 - (B) the MDTA Notes Outstanding Principal Amount will be an amount at issuance agreed among MDOT, MDTA, and the Phase Developer during the Predevelopment Work;
 - (C) three months following Substantial Completion, interest will accrue on a 30/360 basis at a fixed coupon rate to be agreed among MDOT, MDTA, and the Phase Developer during the Predevelopment Work with the yield expected to be based on 30-year US Treasuries yield at time of issuance;
 - (D) three months following Substantial Completion interest will be paid monthly;
 - (E) following the sixth anniversary of Financial Close, the MDTA Notes will amortize with a constant payment profile (i.e. mortgage style) over the remaining term of the Section P3 Agreement; and
 - (F) following the sixth anniversary of Financial Close, principal will be paid monthly;
- (v) all cost assumptions must be clearly stated in the Initial Base Case Financial Model with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book must be sufficient to enable independent verification of individual cost assumptions. The costs must match the values provided in corresponding submissions to MDOT, and must be in real Dollar values, with the exception of the D&C Contract. Where aggregate costs are used as an input within the Initial Base Case Financial Model, a detailed breakdown must be supplied as an annex to the Assumptions Book;
- (vi) the Upfront Payment, Allowed Costs, Development Rights Fee, and Developer Closing Fee Percentage amounts included in the Initial Base Case Financial Model must be consistent with the amounts in Section 1.15 (Initial Upfront Payment), Section 1.16 (Reimbursement of Allowed Costs), Section 1.17 (Reimbursement

of Development Rights Fee), and Section 1.18 (Payment of Developer Closing Fee Percentage);

- (vii) all Lender's closing fees and Rating Agency fees to be paid at Financial Close are reasonable and, if applicable, are resulting from work specified in Exhibit 6 (Predevelopment Work Requirements);
- (viii) the Initial Base Case Financial Model should not include the Mandatory Equity Sale or any Refinancing;
- (ix) the Initial Base Case Financial Model must make clear where contingencies and profit margins have been included;
- (x) all macroeconomic assumptions used in the Initial Base Case Financial Model must be clearly stated in the Assumptions Book;
- (xi) if inflation indices other than CPI-U are used in the model (for example to inflate wages) then these must be clearly stated as separate inputs;
- (xii) the Initial Base Case Financial Model must be compliant with U.S. GAAP, or IFRS to the extent permitted by Lenders; and
- (xiii) the Initial Base Case Financial Model must clearly show the tax assumptions, which must be clearly stated in the Assumptions Book.

(g) **Initial Base Case Financial Model Outputs**

The Initial Base Case Financial Model must include:

- (i) outputs of the Initial Base Case Financial Model that must identify the Initial Base Case Financial Model version and the date of issue;
- (ii) a summary sheet which includes:
 - (A) sources and uses of funds statement;
 - (B) graphs of cover ratios; and
 - (C) a profile of cash balances confirming the financial feasibility of the Section;
- (iii) financial statements (cash flow, sources and uses of funds, balance sheet, and profit and loss) in nominal terms for each period;
- (iv) a schedule outlining the calculation of taxes payable in each period, and showing tax carry forward and un-depreciated balances;
- (v) cash cascade in order of seniority (consistent with the Section P3 Agreement);
- (vi) Section Proposal Equity IRR and other customary IRR metrics including project IRR, pre-tax and post-tax IRR;
- (vii) debt to equity ratio for all periods, defined as the ratio of total debt to total equity and quasi-equity;

- (viii) weighted average cost of capital (the average cost of equity and debt weighted by the prevailing proportions of debt to equity for the initial design and construction) over the term of the Section P3 Agreement;
 - (ix) net present value of construction costs, operations and maintenance costs, toll collection costs, lifecycle costs (using a five percent discount rate, discounted back to the Committed Section Proposal submission date);
 - (x) for each annual period of each loan, all actual and average ratios required by the Lender's term sheets, including as a minimum, the debt service cover ratio, loan life cover ratio being the net present value of future net cash flow available to service debt over the loan life, including cash balances but excluding the balance of the lifecycle maintenance reserve, divided by the senior debt outstanding;
 - (xi) for each period of each loan, all commitment, arrangement, and other fees that are payable;
 - (xii) appropriate reserves as required by the Lender's term sheets, which may include a debt service reserve account and a maintenance reserve account. The Initial Base Case Financial Model must incorporate the benefit of interest earned on all Section Developer cash balances; and
 - (xiii) the impact of all claims for tax allowances made by the Section Developer.
- (h) **Initial Base Case Financial Model Functionality and Sensitivity Analysis**
- (i) The Initial Base Case Financial Model must provide the ability to run sensitivities to absolute or percentage changes, whichever is appropriate, in each of the following areas:
 - (A) traffic and revenue;
 - (B) inflation rates;
 - (C) interest rates;
 - (D) Capital Costs;
 - (E) operating costs, maintenance costs, and rehabilitation costs;
 - (F) date of Financial Close; and
 - (G) Substantial Completion Date.
 - (ii) Running a sensitivity analysis must only require a change to a single model input. The Initial Base Case Financial Model must be developed so that when an input variable is changed, the effect will flow through the model to all relevant outputs (subject to re-optimization of the Initial Base Case Financial Model through the use of a macro, if applicable). Major variable cost items (for example toll collection costs) must dynamically adjust when running sensitivities.
- (i) **Initial Base Case Financial Model Scenarios**
- (i) The Phase Developer shall include a sensitivity analysis in accordance with the following requirements that demonstrates the strength of its Financing Plan.

MDOT may audit and review the Initial Base Case Financial Model to confirm the accuracy of the calculations provided by the Phase Developer.

- (ii) For the variables listed below, the Phase Developer shall present the effect of these variations on the expected Equity IRR, Alternative Equity IRR, and on the minimum and average debt service cost ratios for all Section Debt. For these calculations, the Phase Developer is to solve the Initial Base Case Financial Model to achieve the highest Alternative Equity IRR while the Initial Upfront Payment is maintained. The Phase Developer shall assume that no compensation or damages will be payable by MDOT to the Section Developer under the Section P3 Agreement. The Phase Developer shall state whether any financial covenants in any financing agreement of the Section Developer would be breached under any of the below scenarios:
- (A) gross toll revenue: +10 percent and -10 percent of forecasted amounts (in each year that the Section Developer projects such revenue);
 - (B) fixed (i.e. non variable) operations and routine maintenance work (excluding renewal work) expenditure: +20 percent and -20 percent of forecasted amounts (in each year that the Section Developer projects such expenditures);
 - (C) renewal work expenditure: +20 percent and -20 percent of forecasted amounts (in each year that the Section Developer projects such expenditures);
 - (D) Substantial Completion Date: six months and 12 months delay in the occurrence of the Substantial Completion Date (not caused by compensation events or relief events under the Section P3 Agreement) beyond the Scheduled Substantial Completion Date identified in the Initial Baseline Schedule;
 - (E) interim completion: to the extent the Committed Section Proposal includes interim completion milestones, three months and six months delay in the occurrence of each interim completion milestone date (not caused by compensation events or relief events under the Section P3 Agreement) beyond the scheduled interim completion date identified in the Initial Baseline Schedule;
 - (F) CPI-U: the effects of an decrease in CPI-U rates in 25 basis point intervals from -25 to -50 basis points, and an increase in all CPI-U rates in 25 basis point intervals from +25 to +50 basis points (a parallel shift);
- (iii) For the following variables, the Phase Developer shall maintain the Alternative Equity IRR equal to the Section Proposal Equity IRR amount and present the effect of these variations on the Initial Upfront Payment by solving the Initial Base Case Financial Model, in accordance with the terms of the Agreement to determine the highest Initial Upfront Payment while satisfying the financial covenants in the financing agreements of the Section Developer:
- (A) Benchmark Interest Rate fluctuation (prior to Financial Close): the effects of a decrease in all Benchmark Interest Rates in 25 basis point intervals from -25 to -100 basis points, and an increase in all Benchmark Interest

Rates in 25 basis point intervals from +25 to +100 basis points (i.e. a parallel shift); and

(B) Benchmark Interest Rate fluctuation break even (prior to Financial Close): the maximum basis points increase in all rates (i.e. a parallel shift) such that the Initial Upfront Payment equals \$0.

(iv) The Initial Base Case Financial Model must provide and include the financial model inputs, outputs, and specifications for the following scenarios to assess compliance with the Lender's term sheet and any TIFIA loan agreement that will be used:

(A) "Lenders' Base Case Scenario" (based on the Lenders' base case traffic and revenue and reflecting the Lenders' technical advisor's considerations, and excluding all re-financings);

(B) "Indicative Rating Base Case" (based on the indicative rating base case traffic and revenue and reflecting any other Rating Agency assumptions);

(C) "Lender's Low Case Scenario" ("Lenders' Base Case Scenario" using the Lenders' low case traffic and revenue); and

(D) "Indicative Rating Case" (based on the "Indicative Rating Base Case" using any applicable sensitivities to traffic and revenue required by Rating Agency).

(j) **Initial Base Case Financial Model Assumptions Book**

(i) The Phase Developer shall submit an Assumptions Book that describes in full all of the assumptions underlying the financial projections in the Initial Base Case Financial Model. The Assumptions Book must include, at a minimum, the following:

(A) dates as listed in [●];⁴

(B) assumptions relating to general inflation and, where different, specific inflation relating to each component of expenditure, including construction costs and revenue for each year;

(C) depreciation assumptions split between the various categories of fixed assets;

(D) traffic assumptions underlying the revenue forecasts, including the following reports or information:

(aa) Lender's traffic revenue report (including assumptions for base and low cases);

(bb) revenue projections used by Rating Agencies to determine the base and low cases;

⁴ Dates will be submitted consistent with milestones previously agreed with MDOT and identified in the Committed Section Proposal.

- (E) average actual tolls for each year of the term of the Section P3 Agreement; and
 - (F) all financing assumptions, including drawdowns, capital repayment moratoria, repayment schedules and maturity, interest rates and margin, and arrangement and other fees (all must be referenced to the relevant credit provider term sheet).
- (ii) Any third-party reports developed to support inputs and assumptions used in developing the financial offer comprised in the Committed Section Proposal must be appended to the Assumptions Book.
- (k) **Initial Base Case Financial Model Instructions Guide**
- (i) The Phase Developer shall provide details of how the Initial Base Case Financial Model operates. Such details must include identifying all worksheets and describing their respective functions.
 - (ii) The instructions must include step by step instructions on the procedure to run and optimize the Initial Base Case Financial Model, including any constraints imposed by the credit providers on results of downside sensitivities. The instructions must also explain how to print the model.
- (l) **Detailed Cost and Pricing Data**
- (i) All cost and pricing data included in the Initial Base Case Financial Model must be consistent with that provided to MDOT in the Committed Section Proposal.
 - (ii) The Assumptions Book must explicitly identify any cost or pricing data that has not been agreed in writing by MDOT or is explicitly required as part of the terms of this Agreement or the Section P3 Agreement.

1.7 **Financial Model Audit**

- (a) The Initial Base Case Financial Model must be audited by a model audit firm (the "**Financial Model Auditor**") at the Phase Developer's sole cost.
- (b) The Committed Section Proposal must include a copy of the audit report for the Initial Base Case Financial Model (the "**Bid Model Audit Report**").
- (c) The Financial Model Auditor engaged by the Phase Developer:
 - (i) must not be affiliated with the Phase Developer, any Phase Developer-Related Entity, or the Section Developer;
 - (ii) must be otherwise free of any conflict of interest;
 - (iii) must have a national reputation for similar scope of work; and
 - (iv) must be approved by MDOT, with such approval being based on information to be submitted in Section 1.7(b). Such approval shall not be unreasonably withheld.
- (d) Prior to engaging the Financial Model Auditor, the Phase Developer shall provide MDOT with the following information:

- (i) the name and address of the proposed Financial Model Auditor;
- (ii) confirmation that the Financial Model Auditor is not affiliated with the Phase Developer, any Phase Developer-Related Entity, or the Section Developer;
- (iii) confirmation that no conflicts of interest exist and disclosure of any perceived conflicts of interests that may exist;
- (iv) the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must be at least \$2,000,000 and cover claims by MDOT arising from any errors or omissions by the Financial Model Auditor in connection with the model audit);
- (v) a list of revenue risk highway projects, grouped by geographic location, for which the proposed Financial Model Auditor has provided model auditing services;
- (vi) a list of the Financial Model Auditor team members; and
- (vii) a resume for each Financial Model Auditor team member.

MDOT will use reasonable efforts to provide notice to the Phase Developer of approval or rejection of the Financial Model Auditor within five Business Days of receipt of the above information. If the submission is rejected, the Phase Developer shall submit a different Financial Model Auditor for approval and MDOT will use reasonable efforts to provide notice of approval or rejection within five Business Days. It is the Phase Developer's sole responsibility to ensure that it has obtained approval for the Financial Model Auditor prior to submission of the Committed Section Proposal.

- (e) The audit of the Initial Base Case Financial Model for the purposes of the Committed Section Proposal may consist of the same independent audit of the model required by the Lenders.
- (f) The Bid Model Audit Report must include a statement that the Initial Base Case Financial Model is:
 - (i) free of mechanical errors;
 - (ii) suitable for use in connection with the calculations of termination compensation pursuant to the Section P3 Agreement; and
 - (iii) suitable for use in connection with determining compensation for compensation events under the Section P3 Agreement.
- (g) The Phase Developer and Section Developer will assume the risk of all errors, omissions, defects, and deficiencies in the Initial Base Case Financial Model.
- (h) The Financial Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with U.S. GAAP.
- (i) The Phase Developer and Section Developer will not be entitled to any decrease in the Initial Upfront Payment or any modifications to any provision of this Agreement or the Section P3 Agreement based on any errors in the results of the Initial Base Case Financial Model, or a discovery of one or more erroneous inputs or formula.

- (j) If any errors, omissions, defects, or deficiencies in an Initial Base Case Financial Model are identified prior to MDOT's approval of the Committed Section Proposal, MDOT may require the Committed Section Proposal be withdrawn and resubmitted to MDOT.

1.8 **Traffic and Revenue Report**

The Committed Section Proposal must include an investment grade report, from the preparer of the Phase Developer's traffic and revenue forecast, that supports the assumptions contained in the Initial Base Case Financial Model.

1.9 **Opinion Letter Supporting Traffic and Revenue Report**

The Committed Section Proposal must include an opinion letter from the preparer of the Phase Developer's traffic and revenue forecast that states:

- (a) the Initial Base Case Traffic Projections are reasonable; and
- (b) describes the key assumptions used in the traffic and revenue forecasting.

1.10 **Investment Grade Ratings**

The Committed Section Proposal must include a letter from two Rating Agencies providing indicative investment grade ratings on senior debt and TIFIA loan (if applicable). The letters must include information on the assumptions used in establishing the rating that are consistent with those included in the Initial Base Case Financial Model.

1.11 **Lenders Technical Advisor's Report**

The Committed Section Proposal must include a copy of the Lenders technical advisor's report.

1.12 **Draft TIFIA Loan Agreement**

If the Phase Developer proposes to use the TIFIA loan program as a source of financing the Section, the Committed Section Proposal must include a copy of the draft TIFIA loan agreement term sheet.

1.13 **Form of D&C Contract**

The Committed Section Proposal must include a copy of the full form D&C Contract for the Section, together with a commitment letter from the D&C Contractor confirming that it will enter into the D&C Contract and that the D&C Contract price is agreed.

1.14 **Form of Tolling, Operations, and Maintenance Contracts**

If the tolling, operations, and maintenance work under the Section P3 Agreement will be carried out under one or more separate contracts, the Committed Section Proposal must include a copy of the full form of the tolling, operations, and maintenance contracts together with a commitment letter from each contractor confirming that it will enter into the tolling, operations, or maintenance contract and that the price of such contract is agreed.

1.15 **Initial Upfront Payment**

The Committed Section Proposal must specify the amount of the Upfront Payment that will be payable, subject to adjustments as provided in the Section P3 Agreement, by the Section Developer on Financial Close of the Section P3 Agreement ("**Initial Upfront Payment**").

1.16 Reimbursement of Allowed Costs

The Committed Section Proposal must specify the amount of the Phase Developer's and the Section Developer's Allowed Costs up to the Predevelopment Cost Cap that it proposes will be reimbursed on Financial Close of the Section P3 Agreement, in accordance with the Agreement. These amounts shall be specified in the Initial Base Case Financial Model as detailed cost inputs for each payment of Allowed Costs to be reimbursed on Financial Close.

1.17 Reimbursement of Development Rights Fee

The Committed Section Proposal must specify the amount of the Development Rights Fee that will be reimbursed by the Section Developer on Financial Close of the Section P3 Agreement, in accordance with the Agreement.

1.18 Payment of Developer Closing Fee Percentage

The Committed Section Proposal must specify the amount of the Developer Closing Fee Percentage (if any) that will be paid on Financial Close in accordance with Section 11.2(a)(iii) (Permitted Payments to Phase Developer and Section Developer on Financial Close) of the Agreement.

1.19 Section Proposal Equity IRR

The Committed Section Proposal must specify the Section Proposal Equity IRR and confirm that it is equal to or lower than the Proposal Equity IRR.

1.20 Transit Commitments

The Committed Section Proposal must include the commitments agreed in accordance with Section 11.4 (Regional Transit) of the Agreement and Section 1.17 (Transit Service Improvements) of Exhibit 6 (Predevelopment Work Requirements).

1.21 Safety Requirements of D&C Contractor

The Committed Section Proposal must include a safety program for the D&C Contractor that complies with the Maryland Occupational Safety and Health Administration.

1.22 Section Key Personnel

- (a) The Committed Section Proposal must include the following regarding the Section Key Personnel:
 - (i) the name of each individual proposed to fulfil the role of the Section Key Personnel under the Section P3 Agreement;
 - (ii) a resume for each proposed Section Key Personnel;
 - (iii) at least three references for each proposed Section Key Personnel for work performed on projects in the last 10 years. If the Section Key Personnel has worked on less than three projects in the last 10 years, provide references for the projects that the Section Key Personnel has worked on in the last 10 years. References shall be from project owners, preferably government entities and include the name, position, entity, email address, and telephone number of the reference; and

- (iv) a commitment letter from each proposed Section Key Personnel confirming that:
 - (A) the individual is available to fulfil the role of the Section Key Personnel under the Section P3 Agreement; and
 - (B) the Section Key Personnel will be available to attend meetings in the Baltimore area.
- (b) With respect to the proposed Section Construction Project Manager, the commitment letter under Section 1.22(a)(iv), must also specify that the individual will be available until all design and construction related disputes and claims are resolved, if any.
- (c) With respect to the proposed Section Design Project Manager, the commitment letter under Section 1.22(a)(iv), must also specify that the individual will be available until all design related disputes and claims are resolved, if any.

1.23 Performance Security under Section P3 Agreement

- (a) The Committed Section Proposal must include a commitment letter or letters from one or more Eligible Security Issuers, signed by an authorized representative (evidenced by a current certified power of attorney), committing to provide the performance and payment security required under the Section P3 Agreement.
- (b) The commitment letters must not include any conditions, qualifications, or reservations for underwriting or otherwise, other than a statement that the commitment is subject to the award and execution of the Section P3 Agreement, and Financial Close.
- (c) The Eligible Security Issuers may reserve the right to reasonably approve any material adverse changes to the Section P3 Agreement or the technical provisions following the date of the commitment letter.

1.24 DBE and MBE Documentation

- (a) By submitting the Committed Section Proposal, the Section Developer agrees to meet the DBE participation goal for the Section D&C Work and the MBE participation goal(s) and subgoals that will be established for the Section O&M Work.
- (b) MDOT will advise the Section Developer of the MBE goal(s) and subgoals for the Section O&M Work following completion of the construction work for the Section P3 Agreement, and will provide the Section Developer with the applicable MBE forms to complete. While MDOT has not yet established the specific MBE goal(s) and subgoals for the Section P3 Agreement, the State currently has an overall aspirational MBE participation goal of 29%. Following completion of the construction work, the Section Developer will also be required to provide an MBE Participation Plan to MDOT for approval. The MBE Participation Plan shall include the Section Developer's proposed Section Diversity Manager who will be responsible for state and federal diversity compliance following completion of the Section D&C Work.
- (c) The Committed Section Proposal must include the following:
 - (i) signed DBE forms for the Section D&C Work in the form of Attachment J (DBE Forms);
 - (ii) a signed MBE form for the Section O&M Work in the form of Attachment K (MBE Forms); and

- (iii) a Section DBE Participation Plan for the Section D&C Work that meets the requirements of Attachment L (Section DBE Participation Plan).
- (d) The DBE Participation Schedule in Attachment J shall include the DBE firms that will be used by the Section Developer for the Section D&C Work in the first 180 days from Financial Close of the Section P3 Agreement.
- (e) If the Section Developer is unable to meet the DBE participation goal for the Section D&C Work, it must request and obtain a waiver in accordance with the MDOT DBE Form E of Attachment J with respect to the DBE goal.
- (f) If at any time after submitting the Committed Section Proposal but before contract award the Section Developer has reason to believe that a certified DBE listed on its DBE Participation Schedule is unable to perform, or has become or will become unavailable, or is ineligible to perform the work under the contract, the Phase Developer or Section Developer must within 72 hours of making the determination provide written notification to MDOT. Within five days of making the determination, the Phase Developer or Section Developer must make a written request to MDOT to amend the DBE Participation Schedule. The request shall include:
 - (i) the reason for including of the unavailable or ineligible firm on the original DBE Participation Schedule;
 - (ii) the name of each certified DBE subcontractor that will substitute for the unavailable or ineligible certified DBE subcontractor;
 - (iii) a description of the work that will be performed by each DBE subcontractor;
 - (iv) the percentage of the Agreement to be paid to the certified DBE subcontractor for the work or supply;
 - (v) the Dollar amount of the participation of each DBE firm participating; and
 - (vi) a full description of the Section Developer's Good Faith Efforts to substitute another certified DBE subcontractor to perform the work that the unavailable or ineligible certified DBE subcontractor would have performed.
- (g) If the Section P3 Agreement does not receive federal funds for the Section D&C Work, the Section Developer will be required to comply with the MBE program under Title 14 subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland, to the extent it is practicable and legally permissible to do so.

1.25 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

- (a) The Phase Developer and Section Developer's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" in the Section P3 Agreement.
- (b) The goals and timetables for minority and female participation are set out in the Section P3 Agreement.
- (c) The Phase Developer or Section Developer shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days

of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list:

- (i) the name, address, and telephone number of the subcontractor;
 - (ii) the employer identification number of the subcontractor;
 - (iii) the estimated Dollar amount of the subcontract;
 - (iv) the estimated starting and completion dates of the subcontract; and
 - (v) the geographical area in which the subcontract is to be performed.
- (d) As used in this notice, and in the contract resulting from this solicitation, the "Covered Area" is identified in the Section P3 Agreement.

1.26 **Consistency with Proposal**

Each Committed Section Proposal submitted by the Phase Developer must be consistent with any commitments made by the Phase Developer in its Proposal, unless otherwise agreed in writing by MDOT.

Attachment A

COMMITTED SECTION PROPOSAL LETTER

Date: [●]

[●], (the "**Phase Developer**") and [●] (the "**Section Developer**") submit this Committed Section Proposal in accordance with the terms of the Phase P3 Agreement.

Capitalized terms not otherwise defined in this letter shall have the meaning given to that term in the Phase P3 Agreement.

Subject to the terms below, in consideration for MDOT agreeing to examine and consider this Committed Section Proposal, the undersigned undertakes [jointly and severally] to keep this Committed Section Proposal open for acceptance for 240 days after the date of this proposal, without:

- (a) unilaterally varying or amending its terms; or
- (b) any member of the Phase Developer or the Section Developer withdrawing, or any other change being made in the composition of the [partnership/ joint venture/ limited liability company/ consortium] on whose behalf this Committed Section Proposal is submitted,

without first obtaining the prior written consent of MDOT.

If this Committed Section Proposal is accepted by MDOT, the Phase Developer and the Section Developer shall:

- (a) if requested by MDOT, enter into Good Faith discussions with MDOT regarding the terms of the Section P3 Agreement, in accordance with the requirements of the Phase P3 Agreement; and
- (b) enter, or cause the Section Developer to enter, into the Section P3 Agreement in the form attached as Appendix 1, without varying or amending its terms (except for any modifications agreed in writing by MDOT).

The following individual(s) [is/are] authorized to enter into negotiations with MDOT for, or on behalf of the Phase Developer and the Section Developer in connection with the Section P3 Agreement:

- (a) [●].

The Phase Developer and the Section Developer each certify that:

- (a) the Committed Section Proposal is submitted without reservation, qualification, assumptions, or conditions;
- (b) it is satisfied that the Section P3 Agreement provides sufficient detail regarding the obligations that are to be performed by the Section Developer and that it does not contain internal inconsistencies, errors, or omissions;
- (c) it has carefully checked all the words, figures, and statements in this Committed Section Proposal;
- (d) the Phase Developer and Section Developer each intend to be legally bound by the commitments made in the Committed Section Proposal;

- (e) all Predevelopment Work for the Section as required by Exhibit 6 (Predevelopment Work Requirements), the Phase Developer's Proposal, or as otherwise agreed between the Parties has been completed; and
- (f) it has notified MDOT in writing of:
 - (i) any deficiencies or errors in, or omissions from the Section P3 Agreement or other documents provided by MDOT or MDTA; and
 - (ii) any unusual site conditions observed prior to the date the Committed Section Proposal is submitted.

The Phase Developer and the Section Developer each represent that the Committed Section Proposal remains valid and binding, and that all representations and certifications in the Committed Section Proposal are true, correct, and accurate as of the date of the Committed Section Proposal.

The Phase Developer and the Section Developer understand that MDOT and MDTA are not bound to enter into the Section P3 Agreement with the Section Developer.

Except to the extent expressly set out in the Phase P3 Agreement, the Phase Developer and the Section Developer understand that all costs and expenses incurred by them in preparing this Committed Section Proposal will be borne by the Phase Developer and the Section Developer, and will not be the responsibility of MDOT or MDTA.

Subject to the Phase Developer's and the Section Developer's rights under the Public Information Act, the Phase Developer and the Section Developer consent to MDOT's and MDTA's disclosure of the Committed Section Proposal, to any Persons after the award of the Section P3 Agreement and once it has been signed by all of the parties.

The Phase Developer and the Section Developer agree that MDOT and MDTA will not be responsible for any errors, omissions, inaccuracies, inconsistencies, or incomplete statements in this Committed Section Proposal.

This Committed Section Proposal will be governed by and construed in all respects according to the laws of Maryland.

The business address for the Phase Developer:

(No.)	(Street)	(Floor or Suite)	
(City)	(State or Province)	(ZIP or Postal Code)	(Country)

State or Country of Incorporation/Formation/Organization: [●]

[Signature block for Phase Developer to be inserted]

The business address for the Section Developer:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: [●]

[Signature block of the Section Developer to be inserted]

The following additional information must be provided with the Committed Section Proposal letter:

- (a) a table showing the organization of the Section Developer;
- (b) a detailed description of the legal structure of the Section Developer and each CSP Equity Member that includes the following:
 - (i) if the Section Developer or a CSP Equity Member is a corporation or includes a corporation as a joint venture member, partner, or member, provide the articles of incorporation and bylaws for the Section Developer or CSP Equity Member certified by an appropriate individual;
 - (ii) if the Section Developer or a CSP Equity Member is a partnership or includes a partnership as a joint venture member, partner, or member, provide:
 - (A) the full names and addresses of all partners and the equity ownership interest of each partner; and
 - (B) the incorporation, formation, and organizational documentation for the Section Developer or CSP Equity Member (including partnership agreement and certificate of partnership) certified by an appropriate individual;
 - (iii) if the Section Developer or a CSP Equity Member is a consortium, joint venture, or includes a joint venture as a joint venture member, partner, or member, provide:
 - (A) the full names and addresses of all consortium or joint venture members and the equity ownership interest of each entity; and
 - (B) the incorporation, formation, and organizational documentation for the Section Developer or CSP Equity Member (including the joint venture agreement) certified by an appropriate individual;
 - (iv) if the Section Developer or a CSP Equity Member is a limited liability company or includes a limited liability company as a joint venture member, partner, or member, provide:
 - (A) the full names and addresses of all members and the equity ownership interest of each entity; and
 - (B) the incorporation, formation, and organizational documentation for the Section Developer or CSP Equity Member (including the operating agreement) certified by an appropriate individual.
 - (v) If a CSP Equity Member is an investment fund, acting by and through its fund manager, the incorporation, formation, and organizational documents of the fund manager must satisfy the requirements for organizational documents. The term "organizational documentation" with respect to a CSP Equity Member means:
 - (A) the entity's certificate of formation, articles of incorporation/certificate of partnership/joint venture agreement, or equivalent charter documentation; and
 - (B) the entity must provide its partnership agreement, operating agreement, bylaws, equivalent joint venture, or investment fund internal governing organizational documentation;

- (c) the following documentation to demonstrate the validity and authorization of each Person signing the Committed Section Proposal:
- (i) if the Person is a corporation, a resolution of its governing body certified by an appropriate officer of the corporation;
 - (ii) if the Person is a partnership, a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner;
 - (iii) if the Person is a limited liability company, a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member must provide the foregoing information; or
 - (iv) if the Person is a consortium or other form of joint venture, a resolution of each consortium or joint venture member, certified by an appropriate officer of such consortium or joint venture member. If the Section Developer or Phase Developer is a consortium, joint venture, or a partnership, the Committed Section Proposal must be executed by all consortium or joint venture members or all general partners.
- (d) The Section Developer's partnership agreement, limited liability company operating agreement, charter, or joint venture agreement, as applicable, must include an express provision satisfactory to MDOT stating that, in the event of a dispute between or among joint venture members, partners, members, or shareholders, no joint venture member, partner, member, or shareholder will be entitled to stop, hinder, or delay work on the Section. The Section Developer shall submit the applicable agreement to MDOT and identify on a cover page where in the agreement the provision can be found.

Appendix 1

[A copy of the Section P3 Agreement including the Section Technical Provisions and all other Exhibits to the Section P3 Agreement to be attached]

ATTACHMENT B

FINANCIAL OFFICER'S CERTIFICATE

[Complete a separate Attachment B for each CSP Equity Member and Key Contractor, and guarantor (if applicable)⁵]

I, [Name], the [Title] of [Name of the Member] (the Member) [and the [Title] of [Name of Guarantor] (the Guarantor)], do hereby certify as of [Date]⁶ that:

(a) **General**

- (i) This certificate is being executed and delivered in connection with the Committed Section Proposal submitted by the Phase Developer and Section Developer for the Phase in accordance with the terms of the Phase P3 Agreement.
- (ii) For each of the matters set out below, I have:
 - (A) personal knowledge of this information; or
 - (B) have satisfied myself of this information by obtaining information from officers or employees of the [Member] [and the Guarantor] in whom I have confidence and whose duties require them to have personal knowledge thereof.
- (iii) I make the certifications in this Financial Officer's Certificate to MDOT and MDTA pursuant to the requirements of the Phase P3 Agreement with the intent and understanding that they will be relied upon by MDOT and MDTA as a basis for the evaluation of the Committed Section Proposal.

(b) **Audited Financial Statements**

- (i) The audited financial statements provided by [the Member] [the Guarantor] in the Committed Section Proposal for the fiscal years ended [●],[●], and [●] [and the interim financial statements for the following periods [●] and [●]] are complete and correct copies thereof.
- (ii) Where [the Member] [the Guarantor] has provided unaudited financial results, such financial results present fairly, in all material respects, the financial position and results of operations and cash flows of [the Member] [the Guarantor and its consolidated subsidiaries, including the Member,] as of such dates and for such periods. [The Member] [The Guarantor] has no material contingent liabilities or unusual forward or long-term commitments not disclosed therein.

(c) **Off-Balance Sheet Liabilities**

The [Member] [Guarantor] does not have any material off-balance sheet liabilities [other than as described in the financial statements referred to above] [other than the following: [●]].

(d) **Financial Information Summary**

⁵ Each of the CSP Equity Members should provide its own separate certificate. If, however, any such firm is proposing a guarantor, only a consolidated certificate is required for the guarantor and its guaranteed entity. If a firm has no Guarantor, all references to "Guarantor" should be deleted from the certificate.

⁶ The date must not be earlier than seven calendar days prior to the date the Committed Section Proposal is submitted.

Attached as Annex A is a complete Company Information Summary relating to the Member [or the Guarantor]. All the information provided in the attached Company Information Summary is complete and correct to the best of my knowledge.

(e) **Bankruptcy/Insolvency Proceedings**

- (i) [There has been no "Insolvency Event" (as defined in Section (e)(iii) below) relating to the Member [the Guarantor] or any person or entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the Member [Guarantor] which has occurred within the most recent three fiscal years (whether or not such proceeding was ultimately dismissed).]
- (ii) [Attached as Annex B is a detailed description of an "Insolvency Event" relating to [entity name].]⁷
- (iii) For the purposes of this certification, "**Insolvency Event**" means any voluntary or involuntary bankruptcy, insolvency, liquidation, restructuring, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, resolution or petition for winding-up, or similar proceeding, under any Applicable Law, in any jurisdiction.

(f) **Material Changes in Financial Condition:**

- (i) [No "Material Change" (as defined in Annex C) in the financial condition of the [Member] [Guarantor] has occurred or is projected to occur:
 - (A) within the most recently completed three fiscal years that is not reflected in its audited financial statements; or
 - (B) since the date of its audited financial statements for its most recently completed fiscal year.]
- (ii) [Attached as Annex C is a detailed description of Material Changes in the financial condition of [the Member] [the Guarantor].]⁸

Capitalized terms used but not otherwise defined in this certification have the meaning given in the Phase P3 Agreement.

⁷ Delete this sentence if it is not applicable. Do not provide an Annex B if there is no Insolvency Event to disclose.

⁸ Delete this sentence if it is not applicable. Do not provide an Annex C if there is no Material Change in financial condition to disclose.

IN WITNESS WHEREOF, the undersigned is the [Chief Financial Officer, Treasurer, or equivalent officer] of the entity to which this form relates and has duly executed this certificate as of the date first written above.

Name (signature)

Name (printed)

Title

Entity

Annex A – Company Information Summary

Entity: [●] [CSP Equity Member/ D&C Contractor/ Key Contractor or Guarantor]

SHAREHOLDER ⁹	INTEREST (%)
[Shareholder name]	
[No current shareholders, equity members, partners, or equivalent have a holding of 15% or greater]	

RATING AGENCY ¹⁰	CURRENT RATING	PREVIOUS RATING	DATE OF CHANGE IN RATING
[Rating Agency name]			
[Debt of the [Member] [Guarantor] is not rated by any major credit rating agency.]			
[[Member][Guarantor] has no debt]			

⁹ List current shareholders, equity members partners or equivalent holding a 15% or greater interest in the company (indicate their percentage interest), as well as those having the right to appoint one or more board director(s). If such interest is held by a holding company, a shell corporation, or other form of intermediary, also identify the ultimate or parent entity.

¹⁰ If applicable, list all credit ratings available for the company and provide a copy of the most recent credit report.

Annex B – Insolvency Event

[Member/ Guarantor to provide details]¹¹

¹¹ This Annex B will be deleted if there are no Insolvency Events to disclose to MDOT.

Annex C – Material Change in Financial Condition

- (a) The [Member] [Guarantor] must provide the following details regarding "Material Changes" (defined in paragraph (d) below) in the Member [or Guarantor's] financial condition:
- (i) a description of each Material Change, actual and projected, and any related changes or disruptions in executive management;
 - (ii) the actual and projected impacts on the affected entity's organizational and financial capacity, and its ability to remain engaged in this solicitation and submit a responsive proposal; and
 - (iii) a detailed description of any other projected impacts, positive and negative, of the changes experienced and anticipated to be experienced in the periods ahead, including the likelihood that the circumstances of the change or impacts thereof will continue during the term of the Phase.
- (b) Estimates of the impact on revenues, expenses, and the change in equity must be provided separately for each Material Change. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of Material Changes. Where a Material Change will have a negative financial impact, the affected entity must describe the measures that would be undertaken to insulate the Phase from any recent Material Changes and those currently in progress or reasonably anticipated in the future. If its financial statements indicate that expenses and losses exceed income in each of the three completed fiscal years (even if there has not been a Material Change), the affected entity must describe the measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.
- (c) A Committed Section Proposal that fails to disclose a prior or pending Material Change in financial condition will not be considered a compliant Committed Section Proposal for the purposes of the Agreement.
- (d) A "**Material Change**" shall include the following:
- (i) a change in the tangible net worth of 10 percent or more of net assets;
 - (ii) a sale, merger, or acquisition exceeding 10 percent of the value of net assets prior to the sale, merger, or acquisition which in any way involve the affected entity, its parent company, or guarantor;
 - (iii) a change in credit rating or outlook for the affected entity, its parent company, or guarantor;
 - (iv) the inability to meet material conditions of loan or debt covenants by the affected entity, its parent company, or guarantor that has required or will require a waiver or modification of agreed financial ratios, coverage factors, or other loan stipulations, or additional credit support from shareholders or other third parties;
 - (v) in the current and three most recent completed fiscal years, the affected entity, its parent company, or guarantor:
 - (A) incurred a net operating loss;
 - (B) sustained charges exceeding five percent of the then net assets due to claims, changes in accounting, write-offs, or business restructuring; or

- (C) implemented a restructuring/reduction in labor force exceeding five percent of employees or involved the disposition of assets exceeding 10 percent of the then-net assets; and
- (vi) any other events known to the affected entity that may reasonably be perceived to be a material change in financial condition over the past three years, or which may be pending for the next reporting period.

ATTACHMENT C

BUY AMERICA CERTIFICATE

The undersigned certifies on behalf of itself and all proposed subcontractors (at all tiers) that only domestic steel and iron will be used for the Section.

- (a) The Section Developer shall comply with the Federal Highway Administration ("**FHWA**") Buy America requirements of 23 U.S.C. §313 and 23 CFR §635.410, which permits FHWA participation in the contract only if domestic steel and iron will be used on the Section. To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States, and all manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such materials does not exceed 0.1 percent of the total contract price of the Section P3 Agreement or \$2,500, whichever is greater.
- (b) A false certification is a criminal act in violation of 18 U.S.C. §1001. Should the Section Developer be investigated, the Section Developer has the burden of proof to establish that it is in compliance.
- (c) At the Section Developer's request, MDOT may, but is not obligated to, seek a waiver of Buy America requirements if grounds for the waiver exist. However, the Section Developer certifies that it will comply with the applicable Buy America requirements if a waiver of those requirements is not available, or not pursued by MDOT.

SECTION DEVELOPER	
SIGNATURE	
NAME (printed or typed)	
TITLE	
DATE	

Attachment D

COMMITTED SECTION PROPOSAL AFFIDAVIT

[To be signed by the Phase Developer, Section Developer, each Key Contractor, and any guarantors]

1. AUTHORITY

I HEREBY AFFIRM THAT:

[●], possess the legal authority to make this Affidavit.

2. CERTIFICATION REGARDING COMMERCIAL NON-DISCRIMINATION

- (a) [●] hereby certify and agree that in preparing the Committed Section Proposal, the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* have considered all proposals submitted from qualified, potential subcontractors and suppliers, and have not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- (b) "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination".
- (c) Without limiting any other provision of the Committed Section Proposal, it is understood that, if this certification is false, such false certification constitutes grounds for MDOT to reject the Committed Section Proposal.
- (d) Attached to this affidavit, the Phase Developer and Section Developer submit a list of all instances within the past four years where there has been a final adjudicated determination in a legal or administrative proceeding in the State where the Phase Developer or Section Developer discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken.
- (e) The Phase Developer and Section Developer agree to comply in all respects with the State's Commercial Non-discrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

3. AFFIRMATION REGARDING BRIBERY CONVICTIONS I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]*, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to, §6-220 of the Criminal Procedure Article of the Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with

the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

[●].

4. **AFFIRMATION REGARDING OTHER CONVICTIONS I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]*, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

- (a) been convicted under state or federal statute of:
 - (i) a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (ii) fraud, embezzlement, theft, forgery, falsification, or destruction of records, or receiving stolen property;
- (b) been convicted of any criminal violation of a state or federal antitrust statute;
- (c) been convicted under the provisions of the Racketeer Influenced and Corrupt Organization Act under 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (d) been convicted of a violation of the State Minority Business Enterprise Law, §14- 308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (e) been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (f) been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in Sections 4(a) to 4(e) above;
- (g) been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (h) been found in a final adjudicated decision to have violated the Commercial Non-discrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (i) admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in Sections 2, 3 and 4(a) to 4(h) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

[●]

5. **AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]*, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension):

[●]

6. **AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

- (a) the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to §16- 101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (b) the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

[●]

7. **SUBCONTRACT AFFIRMATION I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

8. **AFFIRMATION REGARDING COLLUSION I FURTHER AFFIRM THAT:**

Neither I, nor to the best of my knowledge, information, and belief, the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* has:

- (a) agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Committed Section Proposal that is being submitted; or
- (b) directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action, in restraint of free competitive bidding in connection with the Committed Section Proposal.

9. **CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

Except as validly contested, the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* has paid, or has arranged for payment of, all taxes due to the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due to the State of Maryland prior to final settlement.

10. **CONTINGENT FEES**

I FURTHER AFFIRM THAT:

The *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the contract.

11. **CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(a) The undersigned certifies that, in accordance with §17-705 of the State Finance and Procurement Article of the Annotated Code of Maryland:

- (i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of the State Finance and Procurement Article of the Annotated Code of Maryland; and
- (ii) it is not engaging in investment activities in Iran as described in §17-702 of the State Finance and Procurement Article of the Annotated Code of Maryland.

(b) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

[●]

12. **CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)**

I FURTHER AFFIRM THAT:

The *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* has complied with §14-413 of the provisions of State Finance and Procurement Article of the Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

13. **ACKNOWLEDGEMENT**

(a) I ACKNOWLEDGE THAT this Affidavit is to be furnished to MDOT and may be distributed to units of:

- (i) the State of Maryland;
 - (ii) counties or other subdivisions of the State of Maryland;
 - (iii) other states; and
 - (iv) the federal government.
- (b) I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this Committed Section Proposal shall be construed to supersede, amend, modify, or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms, and covenants undertaken by the *[Phase Developer/ Section Developer/ Key Contractor/ Guarantor]* with respect to:
- (i) this Affidavit;
 - (ii) the contract; and
 - (iii) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: [●]

(print name of organization)

By: [●]

(print name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

Attachment E

NON-COLLUSION AFFIDAVIT

[To be signed by the Section Developer, each CSP Equity Member, Key Contractor, and any guarantor]

State of _____

County of _____

Each of the undersigned _____, being first duly sworn, deposes and says that:

1. The Committed Section Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, joint venture, limited liability company, or corporation.
2. The Committed Section Proposal is genuine and not collusive or sham.
3. The *[Section Developer / Key Contractor / CSP Equity Member]* has not directly or indirectly induced or solicited any other proposer to put in a false or sham Committed Section Proposal, and has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham Committed Section Proposal or that anyone shall refrain from proposing.
4. The *[Section Developer / Key Contractor / CSP Equity Member]* has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any part of the Committed Section Proposal, or to fix any overhead, profit, or cost element (except to the extent expressly required by the Agreement), or to secure any advantage against MDOT, MDTA, or anyone interested in the proposed agreement.
5. All statements contained in the Committed Section Proposal are true.
6. The *[Section Developer / Key Contractor / CSP Equity Member]* has not, directly or indirectly, submitted its prices or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, joint venture, limited liability company, organization, Committed Section Proposal depository or any member, partner, joint venture member, or agent thereof to effectuate a collusive or sham Committed Section Proposal.
7. The *[Section Developer / Key Contractor / CSP Equity Member]* will not, directly or indirectly, divulge information or data regarding the price or other terms of its Committed Section Proposal to any other Person, or seek to obtain information or data regarding the price or other terms of any other proposal, until after award of the Section P3 Agreement or rejection of the Committed Section Proposal.

(Signature)

(Signature)

(Name Printed)

(Name Printed)

(Title)

(Title)

(Organization)

(Organization)

Subscribed and sworn to before me this _____ day of _____, 20[●].

Notary Public in and for said County and State

My commission expires: [_____]

Attachment F

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

[To be signed by the Section Developer, each Key Contractor, each D&C Contract Member, and each CSP Equity Member]

The undersigned certifies, on behalf of *[Section Developer/ Key Contractor /D&C Contract Member/ CSP Equity Member]*, 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; and
- (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 any 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, and shall include a copy of said form in its Committed Section Proposal.

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.

The undersigned 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.

The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

[●]

Name: [●]

Title: [●]

Entity Making Certification: [●]

Date: [●]

Attachment G

CONFLICT OF INTEREST

[To be signed by the Section Developer]

1. Definitions:
 - (a) **"Conflict of Interest"** means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
 - (b) **"Person"** has the meaning stated in COMAR §21.01.02.01 and includes a proposer, bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a proposal or offer is made.
2. The Section Developer warrants that, except as disclosed in paragraph 3 below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to an actual, potential, or perceived Conflict of Interest.
3. The following facts or circumstances give rise or could in the future give rise to an actual, potential, or perceived Conflict of Interest:
 - (a) [●] (explain detail—attach additional sheets if necessary).
4. The Section Developer agrees that if an actual, potential, or perceived Conflict of Interest arises after the date of this affidavit, the Section Developer shall immediately make a full disclosure in writing to MDOT of all relevant facts and circumstances. This disclosure shall include a description of actions which the Section Developer has taken and proposes to take to avoid, mitigate, or neutralize the actual, potential, or perceived Conflict of Interest. If the Section P3 Agreement has been awarded and performance of the Section P3 Agreement has begun, the Section Developer shall continue performance until notified by MDOT of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____

(Authorized Representative and Affiant) (Section Developer)

Attachment H

FEDERAL DEBARMENT CERTIFICATION

[To be signed by the Section Developer]

By signing and submitting the Committed Section Proposal, and by executing the Section P3 Agreement, the Section Developer and its contractors (at all tiers) shall be deemed to have signed and delivered the following certification:

1. The undersigned certifies to the best of its knowledge and belief, that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
 - (d) 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.
2. Where the Section Developer or a contractor is unable to certify to any of the statements in this certification, the Section Developer or contractor shall attach a certification to its proposal or bid, or shall submit it with the executed agreement, stating that it is unable to provide the certification and explaining the reasons for such inability.

Attachment I

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be signed by the Section Developer]

The undersigned certifies on behalf of _____, that:

_____ (Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs).
- It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs).
- It will develop and will file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs). *[Note: Check this box only if the member of the proposer team is not yet formed and is subject to 41 CFR Part 60-2]*

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114, or 11246.
- It has participated in a previous contract or subcontract subject to the equal opportunity section described in Executive Orders 10925, 11114, or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Title: _____

Date: _____

If not Section Developer, relationship to Section Developer: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR §60-1.7(b)(1)), and must be submitted by proposers only in connection with contracts which are subject to the equal opportunity section. Contracts that are exempt from the equal opportunity section are set forth in 41 CFR §60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by Executive Orders or their implementing regulations.

Proposers who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR §60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period

specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Attachment J

DBE FORMS

[Forms on following pages]

For the purposes of this Attachment J, the "**Prime Contractor**" means the Section Developer or D&C Contractor as the context applies.

Form 1

SECTION DEVELOPER'S ACKNOWLEDGEMENT OF DBE PROGRAM REQUIREMENTS

[To be signed by the Section Developer]

THIS DOCUMENT SHALL BE COMPLETED AND INCLUDED WITH THE COMMITTED SECTION PROPOSAL. IF THE PHASE DEVELOPER FAILS TO SUBMIT THIS FORM WITH THE COMMITTED SECTION PROPOSAL AS REQUIRED, MDOT MAY DETERMINE THAT THE COMMITTED SECTION PROPOSAL IS NOT COMPLIANT.

In conjunction with the Committed Section Proposal, I affirm and agree to the following:

- (a) I acknowledge that MDOT will establish a DBE participation goal to the extent required by federal law for the Section D&C Work.
- (b) I acknowledge that MDOT has or will set the DBE participation goal based on the actual work to be performed and the availability of DBE firms to perform the Section D&C Work.
- (c) I commit to making a Good Faith Effort to achieve the established DBE participation goal. I acknowledge that I must either:
 - (i) meet each DBE participation goal established by MDOT and MDTA, and document my commitments to the DBE firms; or
 - (ii) if I am unable to meet a goal, request a waiver and document my Good Faith Efforts to meet that goal.
- (d) I understand that if the Committed Section Proposal is accepted by MDOT, I must submit all additional documentation as required by MDOT and MDTA within five Business Days, or other time period specified by MDOT, of being notified of the acceptance.
- (e) I hereby agree that if the Committed Section Proposal is accepted by MDOT, I will review all forms and documentation required to be submitted in connection with the DBE program, including all documentation of Good Faith Efforts to obtain the participation of DBE firms. I further understand that all forms completed and executed by me or the Prime Contractor regarding any established DBE goal, including commitments to the participation or specific DBE firms, will:
 - (i) become part of the Section P3 Agreement; and
 - (ii) bind the Section Developer,for compliance purposes as set forth in the Section P3 Agreement. Nothing herein shall grant any rights of the Section Developer under the Section P3 Agreement to the Prime Contractor or any of its subcontractors by virtue of the DBE forms executed by the Prime Contractor being incorporated into the Section P3 Agreement.
- (f) I acknowledge that if I fail to return each completed document within the required time as directed by MDOT, MDOT may determine that I am not eligible for award of the Section P3 Agreement.
- (g) In the solicitation of quotations or offers, DBE firms shall be provided not less than the same information and amount of time to respond as are non-DBE firms.

- (h) The solicitation process shall be conducted in such a manner so as to not place DBE firms at a competitive disadvantage to non-DBE firms.
- (i) I understand that in the event that no federal funds are used to finance the Section D&C Work, MDOT reserves the right to establish MBE goals for the Section D&C Work under Title 14, subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland, to the extent it is practicable and legally permissible to do so.

I solemnly affirm under the penalties of perjury that each of the affirmations, certifications, and acknowledgements contained herein are true to the best of my knowledge, information, and belief.

[Signature block of the Section Developer to be inserted]

FORM 2

[To be signed by the Section Developer]

MDOT DBE FORM PACKAGE SUBMISSION FEDERALLY-FUNDED CONTRACTS SECTION DEVELOPER'S AFFIRMATION

THIS AFFIRMATION MUST BE COMPLETED AND INCLUDED WITH THE COMMITTED SECTION PROPOSAL. IF THE PHASE DEVELOPER FAILS TO COMPLETE AND SUBMIT THIS FORM AS REQUIRED, MDOT MAY DETERMINE THAT THE COMMITTED SECTION PROPOSAL IS NOT COMPLIANT.

I hereby affirm that I have reviewed all required DBE program forms and documentation, whether attached hereto or subsequently submitted in support hereof, including any and all affidavits and the DBE participation schedule. The attached DBE Form Package Submission includes:

- (a) MDOT DBE Form A - Certified DBE Utilization and Fair Solicitation Affidavit; and
- (b) MDOT DBE Form B - DBE Participation Schedule.

I understand that if I am notified that the Committed Section Proposal has been accepted by MDOT, I must obtain the following documentation from the Prime Contractor and submit it within five Business Days of receiving such notice:

- (a) MDOT DBE Form C - Contracts Outreach Efforts Compliance Statement;
- (b) MDOT DBE Form D - DBE Subcontractor Project Participation Affidavit;
- (c) MDOT DBE Form E - Good Faith Efforts Guidance and Documentation forms (if waiver was requested); and
- (d) any other documentation required by MDOT to ascertain the Section Developer's compliance in connection with the certified DBE participation goal.

I further understand that all forms completed and executed by me or the Prime Contractor regarding any established DBE goal, including commitments to the participation or specific DBE firms, as well as any waiver requests, will (i) become part of the Section P3 Agreement; and (ii) bind the Section Developer, for compliance purposes as set forth in the Section P3 Agreement. Nothing herein shall grant any additional rights under the Section P3 Agreement to the Section Developer, or to the Prime Contractor or any of its subcontractors by virtue of the DBE forms executed by the Prime Contractor being incorporated into the Section P3 Agreement.

I solemnly affirm under the penalties of perjury that the contents of the DBE program forms completed by me or the Prime Contractor are true to the best of my knowledge, information, and belief.

[Signature block of Section Developer to be inserted]

Form 3

MDOT DBE FORM A - CERTIFIED DBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

THIS AFFIDAVIT MUST BE INCLUDED WITH THE COMMITTED SECTION PROPOSAL. IF THIS AFFIDAVIT IS NOT COMPLETED AND SUBMITTED AS REQUIRED, MDOT MAY DETERMINE THAT THE COMMITTED SECTION PROPOSAL IS NOT COMPLIANT.

In connection with the Committed Section Proposal, I affirm the following:

(a) DBE Participation (PLEASE CHECK ONLY ONE)

I will meet the overall certified DBE participation goal of [●] percent for the Section D&C Work. I agree that this percentage of the total Dollar amount of the Section D&C Work for the DBE goal will be performed by certified DBE firms as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts), as updated in accordance with the Section P3 Agreement.

OR

I conclude that I am unable to achieve the DBE participation goal for the Section D&C Work. I hereby request a waiver, in whole or in part, of the goal. Within five Business Days of being notified that the Committed Section Proposal has been accepted, I will submit a written waiver request. For a partial waiver request, I agree that certified DBE firms will be used to accomplish the percentages of the total Dollar amount of the Section D&C Work as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts).

(b) Additional DBE Documentation

I understand that within five Business Days of being notified that the proposal has been accepted, I must submit the following documentation to MDOT:

- (i) MDOT DBE Form C – Contracts Outreach Efforts Compliance Statement;
- (ii) MDOT DBE Form D – DBE Subcontractor Project Participation Affidavit;
- (iii) MDOT DBE Form E – Good Faith Efforts Guidance and Documentation forms (if waiver was requested); and
- (iv) any other documentation required by MDOT to ascertain the Proposer’s susceptibility of being selected for award in connection with the certified DBE participation goal in accordance with 49 CFR Part 26, Appendix A.

I acknowledge that if I fail to return each completed document (in paragraphs (b)(i) to (iv)) within the required time, MDOT may determine that the Section Developer is not compliant and therefore not eligible for contract award or not susceptible of being selected for award. I further acknowledge that nothing contained herein or in any of the additional DBE program forms shall grant any rights of the Section Developer under the Section P3 Agreement to the Prime Contractor or any of its subcontractors by virtue of the DBE forms executed being incorporated into the Section P3 Agreement.

(c) Information Provided to DBE firms

In the solicitation of subcontract quotations or offers, DBE firms were provided no less than the same information and amount of time to respond as were non-DBE firms.

(d) Products and Services Provided by DBE firms

I hereby affirm that the DBE firms are only providing those products and services for which they are MDOT certified.

I solemnly affirm under the penalties of perjury that the information in this affidavit is true to the best of my knowledge, information, and belief.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

Form 4

MDOT DBE FORM B - DBE PARTICIPATION SCHEDULE

PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE

PARTS 2 AND 3 MUST BE INCLUDED WITH THE COMMITTED SECTION PROPOSAL. IF PART 2 IS NOT COMPLETED AND SUBMITTED WITH THE COMMITTED SECTION PROPOSAL AS REQUIRED, MDOT MAY DETERMINE THAT THE COMMITTED SECTION PROPOSAL IS NOT COMPLIANT.

***** STOP *****

FORM INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS FORM

1. Please refer to the MDOT Directory at <https://mbe.mdot.maryland.gov/directory/> ("**MDOT Directory**") to determine if a firm is certified for the appropriate North American Industry Classification System ("**NAICS**") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit www.naics.com. Only those specific products and services for which a firm is certified in the MDOT Directory can be used for the purposes of achieving the DBE participation goal.
2. In order to be counted for the purposes of achieving the DBE participation goal, the firm must be certified for that specific NAICS ("DBE" for Federally-funded projects designation after NAICS Code). **WARNING:** If the firm's NAICS Code is in graduated status, such services/products **will not be counted** for purposes of achieving the DBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).
3. Examining the NAICS Code is the **first step** in determining whether a DBE firm is certified and eligible to receive DBE participation credit for the specific products/services to be supplied or performed under the contract. The **second step** is to determine whether a firm's products/services description in the DBE Directory includes the products to be supplied and services to be performed that are being used to achieve the DBE participation goal.
4. If you have any questions as to whether a firm is DBE certified, or if it is certified to perform specific services or provide specific products, please call MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or send an email to mbe@mdot.state.md.us.
5. The Prime Contractor's subcontractors are considered second-tier subcontractors. The following two conditions must be met before MDOT may approve a third-tier or lower tier contracting agreement:
 - (a) the Prime Contractor must request in writing approval of each third-tier or lower tier contract arrangement; and
 - (b) the request must contain specifics as to why a third-tier or lower tier contracting arrangement should be approved.

These documents must be submitted with the Committed Section Proposal in Part 2 of this DBE Participation Schedule.

6. For each DBE firm that is being used as supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the DBE participation goal:**

- (a) Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item (c). If the answer is NO, please continue to Item (b).
- (b) Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item (d). If the answer is NO, continue to Item (c) only if the DBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220 and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then no DBE participation credit will be given for the supply of these products.
- (c) For purposes of achieving the DBE participation goal, you may count only the amount of any reasonable fee that the DBE firm will receive for the provision of such products/supplies - not the total subcontract amount or the value (or a percentage thereof) of such products and supplies. For Column 3 of the DBE Participation Schedule, please divide the amount of any reasonable fee that the DBE firm will receive for the provision of such products/services by the total contract value and insert the percentage in Line 3.1.
- (d) Is the firm certified as a manufacturer (refer to the firm's NAICS Code and specific description of products/services) of the products/supplies to be provided? If the answer is NO, please continue to Item (e). If the answer is YES, for the purposes of achieving the DBE participation goal, you may count the total amount of the subcontract. For Column 3 of the DBE Participation Schedule, please divide the total amount of the subcontract by the total contract value and insert the percentage in Line 3.1.
- (e) Is the firm certified as a supplier, wholesaler or regular dealer? If the answer is YES and the DBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total contract value and insert the percentage in Line 3.1. If the answer is YES and the DBE firm is only being used as a supplier, wholesaler or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the DBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.
7. For each DBE firm that is not being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the amount of the subcontract for purposes of achieving the DBE participation goal, divide the total amount of the subcontract by the total contract value and insert the percentage in Line 3.1.
- Example:** $\$2,500$ (Total Subcontract Amount) \div $\$10,000$ (Total Contract Value) \times 100 = 25%
8. Please note that for USDOT-funded projects, a DBE prime may count towards its DBE participation goal work performed by its own forces. Include information about the DBE prime in Part 2.
9. **WARNING:** The percentage of DBE participation, computed using the Dollar amounts in Column 3 for all of the DBE firms listed in Part 2, MUST at least equal the DBE participation goal as set forth in MDOT DBE Form A – Federally-Funded Contracts for this solicitation. If the Prime Contractor is unable to achieve the DBE participation goals, then the Prime Contractor must request a waiver in Form A. You may wish to use the Goal Worksheet shown below to assist you in calculating the percentage and confirming that you have met the applicable DBE participation goal.

GOAL WORKSHEET	
Total DBE Firm Participation (Add percentages in Column 3 for all DBE firms listed in DBE Participation Schedule)	(A) _% ¹²
The percentage amount in Box A above should be equal to the percentage amount in Box E below.	
Add <i>Countable</i> Subcontract Amounts (see 6 through 8 of Instructions) for all DBE firms listed in DBE Participation Schedule, and insert in Box B	(B) \$ _ ¹³
Insert the Total Contract Amount for the Section D&C Work in Box C	(C) \$ _ ¹⁴
Divide Box B by Box C and Insert in Box D	(D) =
Multiply Box D by 100 and insert in Box E	(E) = _%

¹² The cumulative DBE percentage in this column should meet the DBE participation goal for the Section D&C Work or the initial 180 days following Financial Close, unless a waiver has been obtained in accordance with Form 3.

¹³ The total countable subcontract amounts shall be equal to the aggregate value of the total countable subcontract amounts for the initial 180 days following Financial Close.

¹⁴ The total contract amount means the total value of the work under the Section P3 Agreement for the first 180 days following Financial Close.

PART 2 – DBE PARTICIPATION SCHEDULE

PARTS 2 AND 3 MUST BE INCLUDED WITH THE COMMITTED SECTION PROPOSAL. IF PART 2 IS NOT COMPLETED AND SUBMITTED WITH THE COMMITTED SECTION PROPOSAL AS REQUIRED, MDOT MAY DETERMINE THAT THE COMMITTED SECTION PROPOSAL IS NOT COMPLIANT.

Prime Contractor	Describe scope of work to be Completed by Prime Contractor

LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.

NAME OF DBE SUBCONTRACTOR AND TIER	CERTIFICATION NO. AND DBE CLASSIFICATION	DBE CONTRACT VALUE AND PERCENTAGE OF SECTION D&C WORK ¹⁵
<p>[insert name of DBE subcontractor]</p> <p><input type="checkbox"/> Please check if DBE firm is a third-tier or lower tier contractor (if applicable).</p>	<p>Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other DBE Classification</p> <p>_____</p>	<p>(a) Dollar amounts of subcontract(s) with DBE subcontract: \$[●].¹⁶</p> <p>(b) Total percentage to be paid to the DBE subcontractor as a percentage of the total Section D&C Work contract value (excluding products/ services from suppliers, wholesalers or regular dealers): [●]%¹⁷</p> <p>(c) Total percentage to be paid to the DBE subcontractor for items of work where the DBE subcontractor is being used as</p>

¹⁵ The aggregate DBE percentage in this column should meet the DBE participation goal for the Section D&C Work for the initial 180 days following Financial Close, unless the Section Developer has obtained a waiver to the DBE participation goal from MDOT in accordance with Form A.

¹⁶ Insert the total Dollar amount of the subcontract(s) with the DBE subcontractor expected to be accrued over the initial 180 days following Financial Close.

¹⁷ Insert the total percentage amount of the Section D&C Work contract value that the DBE subcontractor is responsible for (excluding products/ services from suppliers, wholesalers or regular dealers. This percentage can be used for the purposes of calculating the DBE participation goal.

		<p>a supplier, wholesaler or regular dealer.¹⁸</p> <p>(i) Percentage as a percentage of the total Section D&C Work contract value: [●]%. (ii) Percentage that can be counted towards the DBE participation goal by applying the 60% rule (see section 6(e) in Part 1 - Instructions): [●]%</p>
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Please check if Continuation Sheets are attached. Please add additional sheets as needed.

¹⁸ These percentages should be based on the value of the work expected to be completed in the initial 180 days following Financial Close.

CONTINUATION SHEET

PAGE of

Prime Contractor	Describe scope of work to be completed by Prime Contractor

LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.

NAME OF DBE SUBCONTRACTOR AND TIER	CERTIFICATION NO. AND DBE CLASSIFICATION	DBE CONTRACT VALUE AND PERCENTAGE OF SECTION D&C WORK ¹⁹
[insert name of DBE subcontractor] <input type="checkbox"/> Please check if DBE firm is a third-tier contractor (if applicable).	Certification Number: _____ (If dually certified, check only one box.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other DBE Classification _____	(a) Dollar amounts of subcontract(s) with DBE subcontract: \$[●]. ²⁰ (b) Total percentage to be paid to the DBE subcontractor as a percentage of the total Section D&C Work contract value (excluding products/ services from suppliers, wholesalers or regular dealers): [●]% ²¹ (c) Total percentage to be paid to the DBE subcontractor for items of work where the DBE subcontractor is being used as a supplier, wholesaler or regular dealer. ²² (i) Percentage as a percentage of the total Section D&C Work contract value: [●]%. (ii) Percentage that can be counted towards the DBE participation goal by applying the 60% rule

¹⁹ The cumulative DBE percentage in this column should meet the DBE participation goal for the Section D&C Work for the initial 180 days following Financial Close, unless the Section Developer has obtained a waiver to the DBE participation goal from MDOT in accordance with Form A.

²⁰ Insert the total Dollar amount of the subcontract(s) with the DBE subcontractor expected to be accrued over the initial 180 days following Financial Close.

²¹ Insert the total percentage amount of the Section D&C Work contract value that the DBE subcontractor is responsible for (excluding products/ services from suppliers, wholesalers or regular dealers. This percentage can be used for the purposes of calculating the DBE participation goal.

²² These percentages should be based on the value of the work expected to be completed in the initial 180 days following Financial Close.

		(see section 6(e) in Part 1 - Instructions): [●]%
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PART 3 – CERTIFICATION FOR DBE PARTICIPATION SCHEDULE

PARTS 2 AND 3 MUST BE INCLUDED WITH THE COMMITTED SECTION PROPOSAL.

[To be signed by Section Developer]

I, the undersigned *[Section Developer]*, hereby affirm that:

- (a) I have reviewed the Products and Services Description (specific product that a firm is certified to provide or areas of work that a firm is certified to perform) set forth in the MDOT DBE Directory for each DBE firm listed in the DBE Participation Schedule for the purposes of achieving the DBE participation goal;
- (b) the DBE firms listed are only performing those products/services/areas of work for which they are certified; and
- (c) I have read and understand the form instructions set forth in Part 1 of this DBE Form B.

The undersigned *[Section Developer]* hereby certifies and agrees that it has fully complied with the 49 CFR Part 26 and FHWA Form 1273 which provide that, except as otherwise provided by law, a contractor may not identify a certified DBE firm in a bid or proposal and:

- (a) fail to request, receive, or otherwise obtain authorization from the certified DBE firm to identify the certified DBE in its bid or proposal;
- (b) fail to notify the certified DBE firm before execution of the contract of its inclusion of the bid or proposal;
- (c) fail to use the certified DBE firm in the performance of the contract; or
- (d) pay the certified DBE firm solely for the use of its name in the bid or proposal.

I solemnly affirm under the penalties of perjury that the contents of Parts 2 and 3 of MDOT DBE Form B are true to the best of my knowledge, information, and belief.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MDOT DBE FORM C – Contracts Outreach Efforts Compliance Statement

In conjunction with the Committed Section Proposal submitted, I state the following:

- (a) The Section Developer took the following efforts to identify subcontracting opportunities in these specific work categories :

[●]

- (b) Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified DBE firms for these subcontract opportunities.

- (c) The Section Developer made the following attempts to personally contact the solicited DBE firms:

- (d) Please Check One:

This project does not involve bonding requirements.

The Section Developer assisted DBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS)

- (e) Please Check One:

The Section Developer did attend the pre-bid/pre-proposal meeting/conference.

No pre-proposal meeting/conference was held.

The Section Developer did not attend the pre-proposal meeting/conference.

Company Name

Signature of Representative

Address

Printed Name and Title

City

State and Zip Code

Date

MDOT DBE FORM D –DBE SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT

IF THE SECTION DEVELOPER FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, MDOT MAY DETERMINE THAT THE SECTION DEVELOPER IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD OR THAT THE COMMITTED SECTION PROPOSAL IS NOT SUSCEPTIBLE OF BEING ACCEPTED. SUBMIT ONE FORM FOR EACH CERTIFIED DBE FIRM LISTED IN THE DBE PARTICIPATION SCHEDULE. THE SECTION DEVELOPER IS HIGHLY ENCOURAGED TO SUBMIT FORM D PRIOR TO THE FIVE DAY DEADLINE.

Provided that _____ (Section Developer’s Name) is awarded the Section P3 Agreement, the [D&C Contractor] will enter into a subcontract with _____ (Subcontractor’s Name) committing to participation by the DBE firm _____ (DBE Name) with MDOT Certification Number _____ (if subcontractor previously listed is also the DBE firm, please restate name and provide DBE Certification Number) which will receive at least \$ _____ (total subcontract amount)²³, being _____% (total subcontract percentage) for performing the following products/services for the Section D&C Work²⁴:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

I solemnly affirm under the penalties of perjury that the information provided in this DBE Subcontractor Project Participation Affidavit is true to the best of my knowledge, information, and belief. I acknowledge that, for the purposes of determining the accuracy of the information provided herein, MDOT may request additional information, including, without limitation, copies of the subcontract agreements and quotes.

SECTION DEVELOPER	SUBCONTRACTOR (SECOND-TIER)	SUBCONTRACTOR (THIRD-TIER)
Signature of Representative: _____	Signature of Representative: _____	Signature of Representative: _____

²³ Insert the total Dollar amount of the subcontract(s) with the DBE subcontractor expected to be accrued over the initial 180 days following Financial Close.

²⁴ Insert the total percentage amount of the total contract value for which the DBE subcontractor is responsible (excluding products/ services from suppliers, wholesalers or regular dealers). This percentage can be used for the purposes of calculating the DBE participation goal.

Printed Name and Title: _____	Printed Name and Title: _____	Printed Name and Title: _____
Firm's Name: _____	Firm's Name: _____	Firm's Name: _____
Federal Identification Number:____	Federal Identification Number:____	Federal Identification Number:____
Address:_____	Address:_____	Address:_____
Telephone: _____	Telephone: _____	Telephone: _____
Date: _____	Date: _____	Date: _____

IF DBE FIRM IS A THIRD-TIER SUBCONTRACTOR, THIS FORM MUST ALSO BE EXECUTED BY THE SECOND-TIER SUBCONTRACTOR THAT HAS THE SUBCONTRACT AGREEMENT WITH THE DBE FIRM.

MDOT DBE Form E – GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION

PART 1 – GUIDANCE FOR DEMONSTRATING GOOD FAITH EFFORTS TO MEET DBE PARTICIPATION GOALS

1. GENERAL

In order to show that it has made Good Faith Efforts to meet the DBE participation goal for this Agreement, the Section Developer must either:

- (a) meet the DBE Goal and document its commitments for participation of DBE Firms; or
- (b) when it does not meet the DBE Goal, document its Good Faith Efforts to meet the goal.

2. DEFINITIONS

- (a) **"DBE Goal"** means the DBE participation goal specified in the Section P3 Agreement.
- (b) **"Good Faith Efforts"** has the meaning given to that term in 49 CFR Part 26 and 49 CFR Part 26 Appendix A.
- (c) **"Identified Firms"** means a list of the DBEs identified by MDOT during the goal setting process and listed in the federally-funded solicitation as available to perform the Identified Items of Work. It also may include additional DBEs identified by the Section Developer as available to perform the Identified Items of Work, such as DBEs certified or granted an expansion of services after the solicitation was issued. If the solicitation does not include a list of Identified Firms, this term refers to all of the DBE Firms the Section Developer identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.
- (d) **"Identified Items of Work"** means the bid items identified by MDOT during the goal setting process and listed in the solicitation as possible items of work for performance by DBE Firms. It may also include additional portions of items of work the Section Developer identified for performance by DBE Firms to increase the likelihood that the DBE Goal will be achieved. If the solicitation does not include a list of Identified Items of Work, this term refers to all of the items of work the Section Developer identified as possible items of work for performance DBE Firms and should include all reasonably identifiable work opportunities.
- (e) **"DBE Firms"** means certified DBE Firms. Certified DBE Firms can participate in the federal DBE Program.

3. TYPES OF ACTIONS MDOT WILL CONSIDER

The Section Developer is responsible for making relevant portions of the Section D&C Work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation.

The following is a list of the types of actions MDOT will consider as part of the Section Developer's Good Faith Efforts if the Section Developer fails to meet the DBE Goal. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

3.1 Identify Bid Items as Work for DBE Firms

- (a) Identified Items of Work in Solicitation
 - (i) If the solicitation provides a list of Identified Items of Work, the Section Developer shall make all reasonable efforts to solicit quotes from DBE Firms to perform that work.
 - (ii) The Section Developer may, and is encouraged to, select additional items of work to be performed by DBE Firms to increase the likelihood that the DBE Goal will be achieved.
- (b) Identified Items of Work by the Section Developer
 - (i) If the solicitation does not include a list of Identified Items of Work, the Section Developer should reasonably identify sufficient items of work to be performed by DBE Firms.
 - (ii) Where appropriate, the Section Developer should break out contract work items into economically feasible units to facilitate DBE participation, rather than perform these work items with their own forces. The ability or desire of the Section Developer to perform the work of a contract with its own organization does not relieve the Section Developer of the responsibility to make Good Faith Efforts.

3.2 Identify DBE Firms to Solicit

- (a) DBE Firms Identified in Solicitation
 - (i) If the solicitation provides a list of Identified DBE Firms, the Section Developer shall make all reasonable efforts to solicit those DBE Firms.
 - (ii) The Section Developer may, and is encouraged to, search the DBE Directory to identify additional DBEs who may be available to perform the items of work, such as DBEs that were certified or granted an expansion of their services after the solicitation was issued.
- (b) DBE Firms Identified by the Section Developer
 - (i) If the solicitation does not include a list of Identified DBE Firms, the Section Developer should reasonably identify the DBE Firms, that are available to perform the Identified Items of Work.
 - (ii) Any DBE Firms identified as available by the Section Developer should be certified in the appropriate program.
 - (iii) Any DBE Firms identified as available by the Section Developer should be certified to perform the Identified Items of Work.

3.3 Solicit DBEs

- (a) The Section Developer shall solicit all Identified Firms for all Identified Items of Work by providing written notice. The Section Developer shall:
 - (i) provide written solicitation with sufficient time for DBE Firms to respond;

- (ii) send the written solicitation by first-class mail, facsimile, or email using contact information in the DBE Directory, unless the Section Developer has a valid basis for using different contact information; and
 - (iii) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the DBE, and other requirements of the contract to assist DBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in Section 3.3(c) below.)
- (b) "All" Identified Firms includes the DBEs listed in the solicitation and any DBE Firms that the Section Developer identified as potentially available to perform the Identified Items of Work, but it does not include DBE Firms who are no longer certified to perform the work as of the date the Section Developer provides written solicitations.
- (c) "Electronic Means" includes, for example, information provided via a website or file transfer protocol site containing the plans, specifications, and other requirements of the contract. If an interested DBE cannot access the information provided by electronic means, the Section Developer must make the information available in a manner that is accessible by the interested DBE.
- (d) Follow up on initial written solicitations by contacting DBEs to determine if they are interested. The follow up contact may be made:
- (i) by telephone using the contact information in the DBE Directory, unless the Section Developer has a valid basis for using different contact information; or
 - (ii) in writing via a method that differs from the method used for the initial written solicitation.
- (e) In addition to the written solicitation set forth in Section 3.3(a) and the follow up required in Section 3.3(d), use all other reasonable and available means to solicit the interest of DBE Firms certified to perform the work of the contract. Examples of other means include:
- (i) attending any pre-bid meetings at which DBE Firms could be informed of contracting and subcontracting opportunities;
 - (ii) if recommended by the solicitation, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website; and
 - (iii) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the solicitation, to provide assistance in the recruitment and placement of DBE Firms.

3.4 **Negotiate With Interested DBE Firms**

The Section Developer must negotiate in good faith with interested DBE Firms.

- (a) Evidence of negotiation includes, without limitation, the following:
 - (i) the names, addresses, and telephone numbers of DBE Firms that were considered;

- (ii) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (iii) evidence as to why additional agreements could not be reached for DBE Firms to perform the work.
- (b) The Section Developer, using good business judgment, shall consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and shall take a firm's price and capabilities as well as contract goals into consideration.
- (c) The fact that there may be some additional costs involved in finding and using DBE Firms is not in itself sufficient reason for the Section Developer's failure to meet the contract DBE goal, as long as such costs are reasonable. Factors to take into consideration when determining whether a DBE Firm's quote is excessive or unreasonable include, without limitation, the following:
 - (i) the Dollar difference between the DBE subcontractor's quote and the average of the other subcontractors' quotes received by the Section Developer;
 - (ii) the percentage difference between the DBE subcontractor's quote and the average of the other subcontractors' quotes received by the Section Developer;
 - (iii) the percentage that the DBE subcontractor's quote represents of the overall contract amount;
 - (iv) the number of DBE Firms that the Section Developer solicited for that portion of the work;
 - (v) whether the work described in the DBE and non-DBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (vi) the number of quotes received by the Section Developer for that portion of the work.
- (d) The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
- (e) The Section Developer may not use its price for self-performing work as a basis for rejecting a DBE Firm's quote as excessive or unreasonable.
- (f) The average of the other subcontractors' quotes received by the Section Developer refers to the average of the quotes received from all subcontractors, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a DBE and one quote from a non-DBE.
- (g) The Section Developer shall not reject a DBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified DBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Section Developer concludes is not acceptable, the Section Developer must provide a written detailed statement listing the reasons for this conclusion. The Section Developer must also document the steps taken to verify the capabilities of the DBE and non-DBE Firms quoting similar work.

- (h) The factors to take into consideration when assessing the capabilities of a DBE Firm include the following:
 - (i) financial capability;
 - (ii) physical capacity to perform;
 - (iii) available personnel and equipment;
 - (iv) existing workload;
 - (v) experience performing the type of work;
 - (vi) conduct and performance in previous contracts; and
 - (vii) ability to meet reasonable contract requirements.
- (i) The DBE Firm's standing within its industry, membership in specific groups, organizations, or associations, and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the contract goal.

3.5 **Assisting Interested DBE Firms**

When appropriate under the circumstances, MDOT will consider whether the Section Developer:

- (a) made reasonable efforts to assist interested DBE Firms in obtaining the bonding, lines of credit, or insurance required by MDOT or the Section Developer; and
- (b) made reasonable efforts to assist interested DBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

4. **OTHER CONSIDERATIONS**

In making a determination of Good Faith Efforts MDOT may consider engineering estimates, catalogue prices, general market availability and availability of certified DBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified DBE and non-DBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

MDOT may take into account whether the Section Developer decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the solicitation. MDOT also may take into account the performance of other bidders/offerors in meeting the contract.

5. **DOCUMENTING GOOD FAITH EFFORTS**

At a minimum, the Section Developer seeking a waiver of the DBE Goal or a portion thereof must provide written documentation of its Good Faith Efforts in accordance with the MDOT DBE Program Manual, within 5 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

5.1 **Items of Work**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified DBE Firms in order to increase the likelihood of achieving the stated DBE Goal, by completing Part 2 (Certification Regarding Good Faith Efforts Documentation).

5.2 **Outreach/Solicitation/Negotiation**

- (a) The record of the Section Developer's compliance with the outreach efforts prescribed by 49 CFR Part 26, Appendix A.
- (b) A detailed statement of the efforts made to contact and negotiate with DBE Firms including:
 - (i) the names, addresses, and telephone numbers of the DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) (Complete Part 3 (Identified Items of Work Section Developer Made Available to DBE Firms) and submit letters, fax cover sheets, and emails documenting solicitations); and
 - (ii) a description of the information provided to DBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

5.3 **Rejected DBE Firms**

- (a) For each DBE Firm that the Section Developer concludes is not acceptable or qualified, a detailed statement of the reasons for the Section Developer's conclusion, including the steps taken to verify the capabilities of the DBE and non- DBE firms quoting similar work.
- (b) For each certified DBE Firm that the Section Developer concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Section Developer's conclusion, including the quotes received from all DBE and non- DBE firms bidding on the same or comparable work. (Include copies of all quotes received.)
- (c) A list of DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the DBE contractor or a statement from the Section Developer that the DBE contractor refused to sign the Minority Contractor Unavailability Certificate.

5.4 **Other Documentation**

- (a) Submit any other documentation requested by MDOT to ascertain the Section Developer's Good Faith Efforts.
- (b) Submit any other documentation the Section Developer believes will help MDOT ascertain its Good Faith Efforts.

PART 2 – CERTIFICATION REGARDING GOOD FAITH EFFORTS DOCUMENTATION

PAGE ____ OF ____

Section Developer	Project Description	Solicitation Number

PARTS 3, 4, AND 5 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST

I hereby request a waiver of:

- the DBE participation goal;
- a portion of the DBE participation goal for this solicitation.

I affirm that I have reviewed Part 1 (Guidance for Demonstrating Good Faith Efforts to Meet DBE Participation Goals).

I further affirm under penalties of perjury that the contents of Parts 3, 4, and 5 of this form are true to the best of my knowledge, information and belief.

Company Name

Address

City, State and Zip Code

Signature of Representative

Printed Name and Title

Date

PART 3 – IDENTIFIED ITEMS OF WORK SECTION DEVELOPER MADE AVAILABLE TO DBE FIRMS

PAGE ____ OF ____

Section Developer	Project Description	Solicitation Number

Identify those items of work that the Section Developer made available to DBE Firms.

This includes, where appropriate, those items the Section Developer identified and determined to subdivide into economically feasible units to facilitate the DBE participation. For each item listed, show the anticipated percentage of the total contract amount.

It is the Section Developer's responsibility to demonstrate that sufficient work to meet the goal was made available to DBE Firms, and the total percentage of the items of work identified for DBE participation equals or exceeds the percentage DBE goal set for the solicitation.

Note: If the solicitation includes a list of bid items identified during the goal setting process as possible items of work for performance by DBE Firms, the Section Developer should make all of those items of work available to DBE Firms or explain why that item was not made available. If the Section Developer selects additional items of work to make available to DBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the solicitation?	Does the Section Developer normally self-perform this work?	Was this work made available to DBE firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

PART 4— IDENTIFIED DBE FIRMS AND RECORD OF SOLICITATIONS

PAGE ____ OF ____

Section Developer	Project Description	Solicitation Number

Identify the DBE Firms solicited to provide quotes for the Identified Items of Work made available for DBE participation. Include the name of the DBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the DBE provided a quote, and whether the DBE is being used to meet the DBE participation goal. DBE Firms used to meet the participation goal must be included on the DBE Participation Schedule.

Note: If the solicitation includes a list of the DBE Firms identified during the goal setting process as potentially available to perform the items of work, the Section Developer should solicit all of those DBE Firms or explain why a specific DBE was not solicited. If the Section Developer identifies additional DBE Firms who may be available to perform Identified Items of Work, those additional DBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to DBE Firms must be attached to this form. If the Section Developer used a non-DBE or is self-performing the identified items of work, this Part 4 must be completed.

Name of Identified DBE Firm	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec' d	Quote Used	Reason Quote Rejected
Firm Name: _____		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: <input type="checkbox"/> Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Use Other DBE <input type="checkbox"/> Use Non-DBE <input type="checkbox"/> Self-performing

Name of Identified DBE Firm	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec' d	Quote Used	Reason Quote Rejected
Firm Name: _____ 		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: <input type="checkbox"/> Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Use Other DBE <input type="checkbox"/> Use Non-DBE <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.

PART 5— ADDITIONAL INFORMATION REGARDING REJECTED DBE QUOTES

PAGE ____ OF ____

Section Developer	Project Description	Solicitation Number

This form must be completed if Part 3 indicates that a DBE quote was rejected because the Section Developer is using a non- DBE or is self-performing the Identified Items of Work.

Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a non- DBE, and if applicable, state the name of the non- DBE. Also include the names of all DBE and non-DBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by DBE (Include spec/section number from bid)	Self-performing or Using Non-DBE (Provide name)	Amount of Non- DBE Quote	Name of Other Firms who Provided Quotes & Whether DBE or Non- DBE	Amount Quoted	Indicate Reason Why DBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using No-DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non- DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using No- DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non- DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using No- DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non- DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using No- DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non- DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using No- DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non- DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using No- DBE	\$ _____	_____ <input type="checkbox"/> DBE <input type="checkbox"/> Non- DBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Please check if Additional Sheets are attached.

Attachment K

MBE FORMS

[Form on following page]

For the purposes of this Attachment K, the "**Prime Contractor**" means the Section Developer or O&M Contractor as the context applies.

Form 1

SECTION DEVELOPER'S ACKNOWLEDGEMENT OF MBE PROGRAM REQUIREMENTS

[To be signed by the Section Developer]

THIS DOCUMENT SHALL BE COMPLETED AND INCLUDED WITH THE COMMITTED SECTION PROPOSAL. IF THE PHASE DEVELOPER FAILS TO SUBMIT THIS FORM WITH THE COMMITTED SECTION PROPOSAL AS REQUIRED, MDOT MAY DETERMINE THAT THE COMMITTED SECTION PROPOSAL IS NOT COMPLIANT.

In conjunction with the Committed Section Proposal, I affirm and agree to the following:

- (a) I acknowledge that MDOT and MDTA will establish MBE participation goal(s) and subgoals for the Section O&M Work.
- (b) I acknowledge that MDOT and MDTA will set MBE participation goal(s) and subgoals based on the actual work to be performed and the availability of MBEs to perform the Section O&M Work.
- (c) I commit to making a Good Faith Effort to achieve the MBE participation goal(s) and subgoals for the Section O&M Work. I acknowledge that I must either:
 - (i) meet each MBE participation goal(s) and subgoal established by MDOT and MDTA, and document my commitments to the MBE firms; or
 - (ii) if I am unable to meet the MBE goal(s) or subgoal, request a waiver and document my Good Faith Efforts to meet that goal/subgoal.
- (d) I hereby agree that if the Committed Section Proposal is accepted by MDOT, I will review all forms and documentation required to be submitted in connection with the MBE program, including all documentation of Good Faith Efforts to obtain the participation of MBE firms. I further understand that all forms completed and executed by me or the Prime Contractor regarding any established MBE goal(s) or subgoals, including commitments to the participation or specific MBE firms, will:
 - (i) become part of the Section P3 Agreement; and
 - (ii) bind the Section Developer,for compliance purposes as set forth in the Section P3 Agreement. Nothing herein shall grant any rights of the Section Developer under the Section P3 Agreement to the Prime Contractor or any of its subcontractors by virtue of the MBE forms executed by the Prime Contractor being incorporated into the Section P3 Agreement.
- (e) I acknowledge that if I fail to return each completed document within the required time as directed by MDOT, MDOT may determine that I am not eligible for award of the Section P3 Agreement.
- (f) In the solicitation of quotations or offers, MBE firms shall be provided no less than the same information and amount of time to respond as are non-MBE firms.
- (g) The solicitation process shall be conducted in such a manner so as to not place MBE firms at a competitive disadvantage to non-MBE firms.

I solemnly affirm under the penalties of perjury that each of the affirmations, certifications, and acknowledgements contained herein are true to the best of my knowledge, information, and belief.

[Signature block of the Section Developer to be inserted]

Attachment L

SECTION DBE PARTICIPATION PLAN

- (a) The "Section DBE Participation Plan" shall describe the methods to be employed by the Section Developer for achieving the DBE participation goal for the Section D&C Work.
- (b) The Section DBE Participation Plan shall be subject to review, comment, and approval by MDOT as a condition precedent to Commercial Close of the Section P3 Agreement.
- (c) The Section DBE Participation Plan must also include the following:
 - (i) the specific categories of services and work anticipated for DBE participation for the Section D&C Work;
 - (ii) procedures to enhance, to the extent possible, DBE participation in the Section D&C work;
 - (iii) identification of the DBE firms for the performance of the Section D&C Work to the extent known at the time of submitting the plan (which are consistent with the DBE Participation Schedule);
 - (iv) the name, experience, and qualifications of the Section Developer's Section Diversity Manager;
 - (v) identify the duties of the Section Diversity Manager under the Section P3 Agreement;
 - (vi) detail how the Section Developer will conduct DBE outreach; and
 - (vii) the methods and procedures for how the Section Developer will ensure compliance with its DBE obligations under the Section P3 Agreement.
- (d) The Section Diversity Manager will be the individual with full responsibility for ensuring compliance with all State and Federal diversity requirements including:
 - (i) overseeing all aspects of the DBE program, monitoring DBE participation, and ensuring DBE compliance;
 - (ii) administering the EEO program and ensuring compliance with EEO requirements; and
 - (iii) overseeing workforce development programs, training, and apprenticeship programs (including on-the-job training requirements).
- (e) The Section Diversity Manager will be required for the duration of the Section D&C Work, be on site, and be committed full time.
- (f) The Section Diversity Manager must possess the following minimum qualifications:
 - (i) minimum five years' experience in DBE compliance, equal employment opportunity compliance, Title VI and Title VII of the Civil Rights Act 1964 experience and on-the-job training compliance;
 - (ii) experience working on a P3 project that met the DBE goals; and
 - (iii) a bachelor's degree or equivalent.

EXHIBIT 8

FORM OF SECTION P3 AGREEMENT TERM SHEET

[Refer to document entitled "Section P3 Agreement Term Sheet"]

EXHIBIT 9

PHASE DEVELOPER PROPOSAL

[To be inserted before Agreement is signed]

EXHIBIT 10

REQUIRED INSURANCE FOR PREDEVELOPMENT WORK

1. PHASE DEVELOPER INSURANCE

The Phase Developer shall obtain and maintain, or cause to be obtained and maintained, with the Phase Developer as a named insured (except on Professional Liability policies brought to insure a Key Participant on the Railroad protective liability policy, or with respect to Contractor Pollution Liability Insurance), the following insurances (as required) throughout the Term:

(a) **Workers' Compensation and Employer's Liability Insurance**

- (i) Workers' Compensation and Employer's Liability insurance with statutory workers' compensation (Coverage A), limits and employer's liability (Coverage B), limits of at least \$1 million bodily injury by accident for each accident, and \$1 million bodily injury by disease, for each employee and policy aggregate.
- (ii) The coverage must be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. § 30104).
- (iii) MDOT must be named as an "alternate employer" on the policy for any insurances obtained or maintained under this Section 1(a).

(b) **Commercial General Liability Insurance**

- (i) Commercial General Liability insurance with limits of at least \$1 million per occurrence and \$2 million annual aggregate (with aggregate applicable on a per project basis). The coverage must include premises and operations, independent contractors, personal injury, product and completed operations, broad form contractual liability, explosion, collapse, and underground. There shall be no exclusion for work within 50 feet of a railroad.
- (ii) MDOT must be named as an additional insured on a primary, non-contributory basis for any insurances obtained or maintained under this Section 2(b).
- (iii) Commercial General Liability insurance must be in force for the Term, and include completed operations coverage for a period of at least five years thereafter.

(c) **Automobile Liability Insurance**

- (i) Automobile liability insurance with a limit of at least \$1 million combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles.
- (ii) MDOT must be named as an additional insured on a primary, non-contributory basis for any insurances obtained or maintained under this Section 2(c).

(d) **Umbrella/Excess Liability Insurance**

- (i) Umbrella / excess liability insurance in excess of the underlying limits noted above for employer's liability, commercial general liability, and automobile liability in the amount of \$10 million per occurrence and in the aggregate.

- (ii) MDOT must be named as an additional insured on a primary, non-contributory basis for any insurances obtained or maintained under this Section 2(d).
- (e) **Professional Liability Insurance**
- (i) The Phase Developer shall ensure that any Key Participant providing professional services during the Term obtains and maintains professional liability insurance for liability for any acts, errors, or omissions arising in connection with the Predevelopment Work. Such coverage may be written on a claims-made basis and be evidenced utilizing so-called 'practice' policies and shall have a minimum limit of \$15 million per claim and in the aggregate.
 - (ii) The Professional Liability Insurance required under this Section 1(e) must be maintained until the last Section P3 Agreement achieves Substantial Completion and then three years thereafter.
- (f) **Railroad Protective Liability Insurance**
- (i) If the Phase Developer, or any party undertaking work on behalf of the Phase Developer, is undertaking any work within 50 feet of a railroad, the Phase Developer shall procure and keep in force, or cause to be procured and kept in force, prior to performing any work, railroad protective liability insurance policy with limits and coverage terms and conditions as required by the railroad operator.
 - (ii) The railroad operator shall be the named insured on any Railroad Protective Liability Insurance policy under this Section 1(f). The Phase Developer shall submit a copy of the Railroad Protective Liability insurance policy to MDOT prior to entering any railroad property.
- (g) **Contractor's Pollution Liability Insurance**
- (i) The Phase Developer shall procure, or in the alternative, ensure that any Contractor undertaking subsurface investigation to procure, Contractor's Pollution Liability Insurance to indemnify for bodily injury, property damage, clean up and remediation costs, and other amounts which the Phase Developer or any of its subcontractors and their employees or agents, are legally obligated to pay arising out of such activities.
 - (ii) Contractor Pollution Liability Insurance shall cover any drilling, test borings, or excavation, and shall include transit and disposal at sites that are not owned by MDOT.
 - (iii) The Contractor Pollution Liability Insurance policy does not need to be project specific. The policy must have a minimum limit of \$1 million for any one claim and in the aggregate. Coverage shall include the Phase Developer (if not the named insured), MDOT and MDOT-Related Entities as additional insureds, and shall remain in full force and effect for the period of the subsurface activities and three years thereafter.

All Insurance Policies must insure against certified acts of terrorism regardless of whether the Terrorism Risk Insurance Act is amended or subsequently suspended.

Any limit requirements may be met through a combination of primary and excess (umbrella) insurance policies.

2. **CONTRACTOR INSURANCE**

The Phase Developer shall ensure that any Contractor or consultant performing services under this Agreement carry, as appropriate, the following insurances. Such coverages need not be project-specific.

(a) **Workers' Compensation and Employer's Liability Insurance**

- (i) Workers' Compensation and Employer's Liability insurance with statutory workers' compensation (Coverage A), limits and employer's liability (Coverage B), limits of at least \$500,000 bodily injury by accident for each accident, and \$500,000 bodily injury by disease, for each employee.
- (ii) The Workers' Compensation and Employer's Liability insurance must be extended, if needed, to cover any claims under the United States Longshore and Harbor Workers' Compensation Act (33 U.S.C. §§ 901-950) and the Jones Act (46 U.S.C. §30104).

(b) **Commercial General Liability Insurance**

- (i) Commercial General Liability insurance with limits of at least \$1 million per occurrence and \$1 million annual aggregate (with aggregate applicable on a per project basis). Coverage must include premises and operations, independent contractors, personal injury, product and completed operations, broad form contractual liability, explosion, collapse, and underground.
- (ii) MDOT and the Phase Developer must be included as additional insureds on a primary, non-contributory basis for any insurance obtained or maintained under this Section 2(b).
- (iii) The Commercial General Liability insurance must be maintained for the period of any work under this Agreement plus three years of completed operations coverage after all work is complete.

(c) **Automobile Liability Insurance**

- (i) Automobile liability insurance with a limit of at least \$500,000 combined single limit for bodily injury and property damage covering all owned (if any), non-owned, hired, or borrowed vehicles.
- (ii) MDOT and the Phase Developer must be included as additional insureds on a primary, non-contributory basis for any insurance obtained or maintained under this Section 2(c).

(d) **Professional Liability Insurance**

- (i) The Phase Developer shall ensure that any Contractor or consultant providing professional services during the Term obtains and maintains professional liability insurance for any liability for acts, errors, or omissions arising in connection with the Predevelopment Work.
- (ii) The professional liability insurance may be written on a claims-made basis and be evidenced utilizing so-called 'practice' policies.

- (iii) The professional liability insurance shall have a minimum limit of \$1 million for any one claim and in the aggregate.
- (iv) The professional liability insurance must be in force for any period during which professional services are being provided and include an extended reporting period or continuation of coverage for a period of three years thereafter.

(e) **Other Insurances**

- (i) If any activities during the Term involve marine operations, the Phase Developer shall require the applicable Contractor to obtain and maintain Marine Protection and Indemnity insurance. The Marine Protection and Indemnity insurance must provide protection and indemnity coverage with respect to bodily injury or property damage arising from marine operations, including:
 - (A) damage to piers, wharves, or other fixed or movable structures; and
 - (B) loss or damage to any other vessel, craft, or property on such other vessel or craft.
- (ii) The Marine Protection and Indemnity insurance must have a minimum limit of \$1 million in the aggregate.
- (iii) MDOT and the Phase Developer must be included as additional insureds on a primary, non-contributory basis for any insurances obtained or maintained under this Section 2(e).

EXHIBIT 11

KEY PERSONNEL FOR PREDEVELOPMENT WORK

Position title	Primary functions/duties	Period during which position is to be filled	Minimum qualifications and experience	Name of initial individual
Phase Developer Project Manager	The Phase Developer Project Manager is the individual who has full responsibility for the execution of the Predevelopment Work on behalf of the Phase Developer.	Term	<p>The Phase Developer Project Manager must possess the following minimum qualifications:</p> <ul style="list-style-type: none"> (a) served in a developer's project manager, owner's project manager, or equivalent commercially responsible role on: <ul style="list-style-type: none"> (i) the development, construction, or operations of at least one design-build or P3 highway project with a capital design and construction cost of more than \$250 million. Experience on a P3 project with a concession term of 15 or more years is preferred; and (ii) at least one urban highway project with direct experience or executive oversight for its development, design, or construction; or operations of a tolled highway facility (or lanes of a highway); (b) at least ten years of progressively responsible, successful experience leading to significant, commercially responsible roles achieving the integration of highway project development, design, construction, operation, and maintenance disciplines for the development and delivery of P3 projects; and (c) demonstrated, successful experience working with relevant stakeholders, which may include coordination with 	

Position title	Primary functions/duties	Period during which position is to be filled	Minimum qualifications and experience	Name of initial individual
			<p>community leaders, impacted jurisdictions and property owners, and elected officials.</p> <p>Relevant experience for items (i) and (ii) above shall include design-build, P3, and tolled highway facilities completed after 2000.</p>	
Construction Project Manager	The Construction Project Manager shall serve as the primary point of contact for all communication between the Phase Developer and the Lead Contractor.	Term	<p>The Construction Project Manager must possess the following minimum qualifications:</p> <p>(a) served in a construction project manager role on:</p> <p>(i) at least two highway design-build projects or P3 projects with a capital design and construction cost of more than \$250 million, one of which was developed in the last five years; and</p> <p>(ii) the management and oversight of at least one urban highway project managing the construction of a highway facility or other large transportation infrastructure project;</p> <p>(b) demonstrated, successful experience working with relevant stakeholders, which may include coordination with community leaders, impacted jurisdictions and property owners, and elected officials; and</p> <p>(c) at least ten years of progressively responsible, successful experience leading the construction activities related to the integration of highway project development, design, construction, operation, and maintenance disciplines for</p>	

Position title	Primary functions/duties	Period during which position is to be filled	Minimum qualifications and experience	Name of initial individual
			the development and alternative delivery, including P3 or design-build projects.	
Design Project Manager	The Design Project Manager shall serve as the primary point of contact for all communication between the Phase Developer and the Designer.	Term	<p>The Design Project Manager must possess the following minimum qualifications:</p> <ul style="list-style-type: none"> (a) served in a design project management role on: <ul style="list-style-type: none"> (i) at least two highway design-build projects or P3 projects with a capital design and construction cost of more than \$250 million, one of which was developed in the last five years; and (ii) the management and oversight of all design elements related to at least one urban highway project managing the design of a highway facility or other major transportation development project; (b) demonstrated, successful experience working with relevant stakeholders, which may include coordination with community leaders, impacted jurisdictions and property owners, and elected officials; (c) at least ten years of progressively responsible, successful experience leading the design activities related to the integration of highway project development, design, construction, operation and maintenance disciplines for the development and alternative delivery, including P3 or design-build projects; (d) a bachelor's degree in science; and 	

Position title	Primary functions/duties	Period during which position is to be filled	Minimum qualifications and experience	Name of initial individual
			(e) registered as a professional engineer in the State and Commonwealth of Virginia.	
Lead Finance Manager	The Lead Finance Manager is the individual with full responsibility for coordinating the Predevelopment Work associated with securing debt and equity investments for each Section P3 Agreement.	Term	<p>The Lead Finance Manager must have demonstrated ability and experience:</p> <ul style="list-style-type: none"> (a) successfully structuring financing for a developer of comparable projects including TIFIA, PABs, and other comparable debt; (b) successfully securing equity commitments for comparable projects; and (c) successfully working with credit rating agencies to obtain investment-grade credit ratings for comparable projects. 	

EXHIBIT 12

CONTRACT AFFIDAVIT

[Separate forms to be completed for the Phase Developer and each PD Equity Member]

1. AUTHORITY

I HEREBY AFFIRM THAT:

I, [●] (print name), of the *[Phase Developer/ PD Equity Member]* possess the legal authority to make this Affidavit on behalf of the *[Phase Developer/ PD Equity Member]*.

2. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

(a) I FURTHER AFFIRM THAT the *[Phase Developer/ PD Equity Member]* is a (check applicable box):

- (i) Corporation — domestic or foreign;
- (ii) Limited Liability Company — domestic or foreign;
- (iii) Partnership — domestic or foreign;
- (iv) Statutory Trust — domestic or foreign;
- (v) Sole Proprietorship,

and is registered or qualified as required under Maryland Law.

(b) I FURTHER AFFIRM THAT the *[Phase Developer/ PD Equity Member]*:

- (i) is in good standing in the State of Maryland and the Commonwealth of Virginia, and (if applicable) in the jurisdiction where it is presently organized; and
- (ii) has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (if applicable) filed with the Maryland State Department of Assessments and Taxation is:

Name and Department ID Number: [●]

Address: [●]

and if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that the true name and address of the principal or owner is:

Name and Department ID Number: [●]

Address: [●]

3. **FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the *[Phase Developer/ PD Equity Member]* will comply with, the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

4. **POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the *[Phase Developer/ PD Equity Member]* will comply with §14-101 to §14-108 of the Election Law Article of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$200,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

5. **DRUG AND ALCOHOL FREE WORKPLACE**

I CERTIFY THAT:

- (a) terms defined in COMAR §21.11.08 shall have the same meanings when used in this certification; and
- (b) the *[Phase Developer / PD Equity Member]* shall:
 - (i) maintain a workplace free of drug and alcohol abuse during the Term;
 - (ii) publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (iii) prohibit its employees from working under the influence of drugs or alcohol;
 - (iv) not hire or assign to work on the contract anyone who the *[Phase Developer/ PD Equity Member]* knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (v) promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the *[Phase Developer / PD Equity Member]* has observed the violation or otherwise has reliable information that a violation has occurred;

- (vi) establish drug and alcohol abuse awareness programs to inform its employees about:
 - (A) the dangers of drug and alcohol abuse in the workplace;
 - (B) the [*Phase Developer / PD Equity Member's*] policy of maintaining a drug and alcohol free workplace;
 - (C) any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (D) the penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (vii) provide all employees engaged in the performance of the contract with a copy of the statement required by Section 5(b)(ii), above;
- (viii) notify its employees in the statement required by Section 5(b)(ii), above, that as a condition of continued employment on the contract, the employee shall:
 - (A) abide by the terms of the statement; and
 - (B) notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than five days after a conviction;
- (ix) notify MDOT within 10 days after receiving notice under Section 5(b)(viii)(B), above, or otherwise receiving actual notice of a conviction;
- (x) within 30 days after receiving notice under Section 5(b)(viii)(B), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (A) take appropriate personnel action against an employee, up to and including termination; or
 - (B) require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (xi) make a good faith effort to maintain a drug and alcohol free workplace through the implementation of Section 5(b)(i) to Section 5(b)(x), above.

If the [*PD Equity Member*] is an individual, the individual shall certify and agree as set forth below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

I acknowledge and agree that:

- (a) the award of the Agreement is conditional upon compliance with COMAR §21.11.08 and this certification;
- (b) the violation of the provisions of COMAR §21.11.08 or this certification shall be cause to suspend payments under, or terminate the Agreement for default; and

- (c) the violation of the provisions of COMAR §21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR §21.08.03.

6. **CERTAIN AFFIRMATIONS VALID**

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in the Proposal Affidavit that was attached to the Phase Developer's Proposal, a true and correct copy of which is attached to this affidavit, remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth in this affidavit.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: [●]

By: [●] (printed name of Authorized Representative and Affiant)

[●] (signature of Authorized Representative and Affiant)

EXHIBIT 13

FORM OF PERFORMANCE SECURITY FOR PREDEVELOPMENT WORK

ISSUER: [●]

PLACE FOR PRESENTATION OF DRAFT IN PROGRESS: (Name and Address of Bank/Branch—MUST be CITY OF NEW YORK, NEW YORK or BALTIMORE, MARYLAND Bank/Branch)

APPLICANT: [●]

BENEFICIARY: THE MARYLAND DEPARTMENT OF TRANSPORTATION
7201 Corporate Center Drive, Hanover, Maryland 21076

LETTER OF CREDIT NUMBER: [●]

PLACE AND DATE OF ISSUE: [●]

AMOUNT: \$[●]

Issuer hereby issues this Irrevocable Standby Letter of Credit (this "**Letter of Credit**") in favor of the Maryland Department of Transportation for any sum or sums up to [●] **United States Dollars (\$●)** pursuant to the Phase P3 Agreement (each amount, the "**Stated Amount**"), available by draft at sight drawn on Issuer.

Any draft under this Letter of Credit shall:

- (a) identify this Letter of Credit by the name of Issuer, the Letter of Credit number, amount, and place and date of issue; and
- (b) be accompanied by a certificate, executed by an authorized signatory of the Beneficiary, stating that the person signing the certificate is an authorized signatory of the Beneficiary.

This Letter of Credit shall be honored by Issuer if presented at [CITY OF NEW YORK, NEW YORK or BALTIMORE, MARYLAND Bank/Branch—Name & Address] on or before the "Expiration Date" (defined below).

The obligations of Issuer under this Letter of Credit are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by [Name of Applicant] under any agreement with Beneficiary or by any bankruptcy, insolvency, or other similar proceeding initiated by or against [Name of Applicant].

[Name of Applicant] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw on this Letter of Credit.

The "**Expiration Date**" of this Letter of Credit shall mean the date which is the earlier of:

- (a) close of business on [●] (the "**Stated Expiry Date**") or such subsequent date which the expiration of this Letter of Credit may be extended in accordance with the terms of this Letter of Credit; or

- (b) the date on which the Beneficiary delivers a notice of termination of this Letter of Credit to the bank.

It is a condition of this Letter of Credit that the expiration date shall be automatically extended without amendment for successive one year periods from the Stated Expiry Date, unless at least 60 days prior to the then effective expiration date we send notice to the Beneficiary by certified mail, return receipt requested, or courier mail that we elect not to extend the expiry date of this Letter of Credit for an additional one year period.

This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a "**Fax Drawing**") provided, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary's presentment by email to the email address provided to Issuer in the Fax Drawing.

To the extent not inconsistent with the express provisions of this Letter of Credit, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 ("**ISP98**"), as interpreted under the laws of the State of Maryland, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the State of Maryland, without regard to principles of conflicts of law.

With respect to any suit, action, or proceeding relating to this Letter of Credit ("**Proceedings**"), we irrevocably:

- (a) submit to the exclusive jurisdiction of any court of Maryland and any federal courts in Baltimore, Maryland; and
- (b) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

Issuer:

By:

Name: [●]

Title: [●]

(Authorized Signatory of Issuer)

Please instruct your Bank to have the Letter of Credit issued in the above format in "Draft" form and fax to [●] for approval **PRIOR** to issuance in "Original" form or email a Word file to [●]. **If the draft is not reviewed in advance, the Letter of Credit can be rejected.**

EXHIBIT 14

FORM OF DEVELOPMENT RIGHTS FEE SECURITY

ISSUER: [●]

PLACE FOR PRESENTATION OF DRAFT IN PROGRESS: (Name and Address of Bank/Branch—MUST be CITY OF NEW YORK, NEW YORK or BALTIMORE, MARYLAND Bank/Branch)

APPLICANT: [●]

BENEFICIARY: [Trustee]

LETTER OF CREDIT NUMBER: [●]

PLACE AND DATE OF ISSUE: [●]

AMOUNT: \$[●]

Issuer hereby issues this Irrevocable Standby Letter of Credit (this "**Letter of Credit**") in favor of the [Trustee] for any sum or sums up to [●] **United States Dollars (\$●)** pursuant to the Phase P3 Agreement (each amount, the "**Stated Amount**"), available by draft at sight drawn on Issuer.

Any draft under this Letter of Credit shall:

- (a) identify this Letter of Credit by the name of Issuer, the Letter of Credit number, amount, and place and date of issue; and
- (b) be accompanied by a certificate, executed by an authorized signatory of the Beneficiary, stating that the person signing the certificate is an authorized signatory of the Beneficiary.

This Letter of Credit shall be honored by Issuer if presented at [CITY OF NEW YORK, NEW YORK or BALTIMORE, MARYLAND Bank/Branch—Name & Address] on or before the "Expiration Date" (defined below).

The obligations of Issuer under this Letter of Credit are primary obligations to Beneficiary and shall not be affected by the performance or non-performance by [Name of Applicant] under any agreement with Beneficiary or by any bankruptcy, insolvency, or other similar proceeding initiated by or against [Name of Applicant].

[Name of Applicant] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw on this Letter of Credit.

The "**Expiration Date**" of this Letter of Credit shall mean the date which is the earlier of:

- (a) close of business on [●] (the "**Stated Expiry Date**") or such subsequent date which the expiration of this Letter of Credit may be extended in accordance with the terms of this Letter of Credit; or
- (b) the date on which the Beneficiary delivers a notice of termination of this Letter of Credit to the bank.

It is a condition of this Letter of Credit that the expiration date shall be automatically extended without amendment for successive one year periods from the Stated Expiry Date, unless at least 60 days prior to the then effective expiration date we send notice to the Beneficiary by certified mail, return receipt requested, or courier mail that we elect not to extend the expiry date of this Letter of Credit for an additional one year period.

This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a "**Fax Drawing**") provided, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer's receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary's presentment by email to the email address provided to Issuer in the Fax Drawing.

To the extent not inconsistent with the express provisions of this Letter of Credit, this Letter of Credit is subject to the rules of the International Standby Practices ISP98 ("**ISP98**"), as interpreted under the laws of the State of Maryland, and shall, as to matters not governed by the ISP98, be governed and construed in accordance with the laws of the State of Maryland, without regard to principles of conflicts of law.

With respect to any suit, action, or proceeding relating to this Letter of Credit ("**Proceedings**"), we irrevocably:

- (a) submit to the exclusive jurisdiction of any court of Maryland and any federal courts in Baltimore, Maryland; and
- (b) waive any objection which we may have at any time to the laying of venue of any Proceedings brought in any such court, waive any claim that such Proceedings have been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over us.

Issuer:

By:

Name: [●]

Title: [●]

(Authorized Signatory of Issuer)

Please instruct your Bank to have the Letter of Credit issued in the above format in "Draft" form and fax to [●] for approval **PRIOR** to issuance in "Original" form or email a Word file to [●]. **If the draft is not reviewed in advance, the Letter of Credit can be rejected.**

EXHIBIT 15

ALLOWED COSTS

1. ALLOWED COSTS

1.1 Allowed Costs and Reporting

Any Allowed Costs claimed by the Phase Developer or a Section Developer must meet the requirements of this Exhibit 15 and must have been properly reported in accordance with Section 10.6 (Reporting of Allowed Costs of Predevelopment Work) of the Agreement.

1.2 Allowed Cost Inclusions

- (a) Allowed Costs will be limited to, and calculated in accordance with, the following:
- (i) the cost of providing office space with respect to the Predevelopment Work and Section Work as required in Exhibit 6 (Predevelopment Work Requirements);
 - (ii) for work performed using the personnel, materials, and equipment of the Phase Developer, Key Participants, or a Section Developer:
 - (A) an amount equal to the reasonable fully burdened hourly rate (including overhead and fringe benefits) of each employee performing such work multiplied by the actual number of hours the employee performs that work; plus
 - (B) the reasonable and documented cost of all materials used, including sales taxes, freight and delivery charges, and any applicable discounts; plus
 - (C) the reasonable and documented out-of-pocket costs and expenses for employees on Official Business Travel that are directly attributable to the Phase, consistent with State policy and regulations, and shall not exceed the limits set by the Department of Budget and Management for such costs (including travel, lodging, mileage, and meal reimbursements). Without limiting the foregoing, any costs claimed under this paragraph (C) must comply with the Department of Budget and Management Regulations Travel Regulations²⁵; plus
 - (iii) the costs for the use, operating, maintenance, fuel, storage, and other costs of all deployed tools (excluding small tools) and equipment, calculated at hourly rates determined from the most current volume of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc, or its successors, or at any lesser hourly rate MDOT may approve from time to time in its sole discretion, without area adjustment, but with equipment life adjustment made in accordance with the rate adjustment tables, provided, that if rates are not published for a specific type of tool or equipment, MDOT will establish a rate for it that is consistent with its cost and use in the industry;

²⁵ A copy of Department of Budget and Management Regulations Travel Regulations can be found here https://dbm.maryland.gov/Documents/TravelManagementServices/Travel_Regulations.pdf

- (iv) if the work is performed by a Contractor ("**Performing Subcontractor**") under contract with the Phase Developer, a Key Participant, or a Section Developer, or under contract with a higher tier Contractor, all reasonable amounts owing for work under such contract as determined by MDOT; provided that if the Performing Subcontractor is an Affiliate of the Phase Developer, Key Participant, or a Section Developer, or the applicable higher tier Contractor, the lesser of the contract amount or the amount that would be reasonably obtained in an arm's length transaction for comparable work with a person that is not an Affiliate;
 - (v) reasonable fees and costs paid to legal, technical, financial, insurance, tax, and other professional advisers as well as financial model auditor firms (note that breakage fees will only be deemed Allowed Costs insofar as they represent reasonable compensation for time and expenses incurred);
 - (vi) premiums paid for the required Insurance Policies; and
 - (vii) fees paid in providing the Performance Security and Development Rights Fee Security.
- (b) For the purposes of this Section 1.2, "**Official Business Travel**" shall mean any travel between either:
- (i) the Phase Site, the phase site office referred to in Section 1.2(a)(i), or the MDOT office; and
 - (ii) a location directed to by MDOT (for example the VDOT office).

"Official Business Travel" shall not include an employees' normal commute miles from his or her local home address to the Phase Site, phase site office, or MDOT office.

1.3 **Allowed Cost Exclusions**

Allowed Costs will not include the following:

- (a) third-party entertainment costs, lobbying and political activity costs, costs of alcoholic beverages, costs for international travel, costs for first class travel in excess of prevailing economy travel costs, and costs of club memberships; and
- (b) Allowed Costs shall not include any costs that are excluded under the Federal Contract Cost Principles, 48 CFR §31.205: §31.205-8 (contributions or donations), §31.205-13 (employee morale, health, welfare, food service, and dormitory costs and credits), §31.205-14 (entertainment costs), §31.205-15 (fines, penalties, and mischarging costs), §31.205-27 (organization costs), §31.205-34 (recruitment costs), §31.205-35 (relocation costs), §31.205-43 (trade, business, technical and professional activity costs), §31.205-44 (training and education costs), and §31.205-47 (costs related to legal and other proceedings).

EXHIBIT 16

FEDERAL AND STATE REQUIREMENTS

- Part A Federal Requirements for Federal-Aid Construction Projects
- Part B FHWA Form 1273
- Part C Federal Prevailing Wage Rate
- Part D Equal Employment Opportunity Special Provision
- Part E On the job training program for Federal Aid Highway Construction Projects
- Part F Certification Regarding Use of Contract Funds for Lobbying
- Part G Debarment Certification
- Part H Other State and Federal Requirements

PART A

FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS

1. GENERAL

- (a) All of the statutes, rules, and regulations promulgated by the federal government and applicable to work financed in whole or in part with federal funds will apply to the Predevelopment Work.
- (b) The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," are included in this Exhibit 16. Whenever in these required contract provisions references are made to:
 - (i) "authority", "agency", "authority or agency with which this transaction originated" or "contracting agency", such references will be construed to mean MDOT except where a different authority or agency or officer is specified.
 - (ii) "contracting officer" or "authorized representative", such references will be construed to mean MDOT or the MDOT representative;
 - (iii) "contractor", "prime contractor", "bidder" "Federal-aid construction contractor", "prospective first tier participant", or "first tier participant", such references will be construed to mean the Phase Developer, its authorized representative, or a Contractor, as may be appropriate under the circumstances; and
 - (iv) "contract", "Federal-aid construction contract", or "design-build contract", such references will be construed to mean any Contract to which the FHWA requirements apply.

2. PERFORMANCE OF PREVIOUS CONTRACT

In addition to the provisions in Section II, "Non-discrimination," and Section VI, "Subletting or Assigning the Contract," of the Form 1273 required contract provisions, the Phase Developer shall cause each Contractor to comply with the following:

The contractor shall execute the CERTIFICATION WITH REGARD TO THE PERFORMANCE OF PREVIOUS CONTRACTS OR SUBCONTRACTS SUBJECT TO THE EQUAL OPPORTUNITY CLAUSE AND THE FILING OF REQUIRED REPORTS located in the proposal. No request for subletting or assigning any portion of the contract in excess of \$10,000 will be considered under the provisions of Section VI of the required contract provisions unless such request is accompanied by the CERTIFICATION referred to above, executed by the proposed subcontractor.

3. NON-COLLUSION PROVISION

Title 23, United States Code, §112, requires as a condition precedent to approval by the Federal Highway Administrator of the Contract for this work that each bidder file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract.

4. CONVICT PRODUCED MATERIALS

- (a) FHWA Federal-aid projects are subject to 23 CFR § 635.417, convict produced materials.

- (b) Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-aid highway construction project if such materials have been:
 - (i) produced by convicts who are on parole, supervised release, or probation from a prison; or
 - (ii) produced in a prison project in which convicts, during the 12 month period ending July 1, 1987, produced materials for use in federal aid highway construction projects, and the cumulative annual production amount of such materials for use in federal aid highway construction does not exceed the amount of such materials produced in such project for use in Federal aid highway construction during the 12 month period ending July 1, 1987.

5. ACCESS TO RECORDS

- (a) As required by 2 CFR § 200.336, the Phase Developer and its Contractors shall allow FHWA and the Comptroller General of the United States, or their duly authorized representatives, access to all books, documents, papers, and records of the Phase Developer and subcontractors which are directly pertinent to any grantee or subgrantee contract, for the purpose of making audit, examination, excerpts, and transcriptions thereof.
- (b) The Phase Developer agrees to include this section in each Contract at each tier, without modification, except as appropriate to identify the Contractor who will be subject to its provisions.

6. SUBCONTRACTING

- (a) Any distribution of work must be evidenced by a written binding agreement on file at the Phase Site. Where no field office exists, such agreement must be readily available upon request by MDOT.
- (b) The provisions contained in Form FHWA-1273 specifically, and other federal provisions included with this Agreement are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated in, all contracts and subcontracts, as appropriate for the Predevelopment Work so as to be binding in those agreements.

7. CARGO PREFERENCE ACT

- (a) The Phase Developer shall, in accordance with 46 CFR §381.7 use privately-owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.
- (b) The Phase Developer shall furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated "on board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) to both MDOT and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

- (c) The Phase Developer shall require all Contractors to include the requirements of this Section 7 in each Contract, at every tier, that may involve the transport of equipment, material, or commodities by ocean vessel.

8. TITLE VI ASSURANCES AND NON-DISCRIMINATION

8.1 Title VI Assurances

The Phase Developer shall comply with, and affirmatively ensure the compliance of each Contractor, with all provisions prohibiting discrimination on the basis of race, color, or national origin in accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d to 2000d-4.

8.2 US DOT Order 1050.2A – Appendix A

- (a) For the purposes of this Section 8.2, the term "**Acts and Regulations**" shall mean the following:
 - (i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
 - (ii) 49 CFR Part 1; and
 - (iii) 28 CFR §50.3.
- (b) During the performance of this Agreement, the Phase Developer, for itself, its assignees, and successors in interest agree as follows:
 - (i) **Compliance with Regulations:** The Phase Developer (hereinafter includes consultants) will comply with the Acts and Regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement;
 - (ii) **Non-discrimination:** The Phase Developer, with regard to the work performed by it during this Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Phase Developer will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21;
 - (iii) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Phase Developer for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Phase Developer of the Phase Developer's obligations under this Agreement and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin;
 - (iv) **Information and Reports:** The Phase Developer will provide all information and reports required by the Acts and Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by MDOT to be pertinent to ascertain compliance with such Acts and Regulations, and instructions. Where any

information required of a Phase Developer is in the exclusive possession of another who fails or refuses to furnish the information, the Phase Developer will so certify to MDOT, as appropriate, and will set forth what efforts it has made to obtain the information;

- (v) **Sanctions for Noncompliance:** In the event of the Phase Developer's noncompliance with the non-discrimination provisions of this Agreement, MDOT will impose such contract sanctions as it may determine to be appropriate, including, but not limited to:
 - (A) where applicable, withholding payment of Allowed Costs to the Phase Developer; or
 - (B) declaring a Phase Developer Default under Section 25.1 (Phase Developer Default).
- (vi) **Incorporation of Provisions:** The Phase Developer will include the provisions of paragraphs of this Section 8.2 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts and Regulations, and directives issued pursuant thereto. The Phase Developer will take action with respect to any subcontract or procurement as MDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Phase Developer becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Phase Developer may request MDOT to enter into any litigation to protect the interests of MDOT. In addition, the Phase Developer may request the United States to enter into the litigation to protect the interests of the United States.

8.3 US DOT Order 1050.2A – Appendix E

During the performance of this Agreement, the Phase Developer, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- (b) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- (d) §504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- (e) the Age Discrimination Act of 1975, as amended, (42 U.S.C. §6101 et seq.), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 U.S.C. §471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- (g) the Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- (h) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- (i) the Federal Aviation Administration's Non-discrimination statute (49 U.S.C. §47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (j) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- (k) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency. To ensure compliance with Title VI, you must take reasonable steps to ensure that limited English proficiency persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100); and
- (l) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

PART B
FHWA FORM 1273
FHWA-1273 – Revised May 1, 2012
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide 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 30 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 <http://www.dol.gov/esa/whd/forms/wh347instr.htm> 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 contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime

contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

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

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23

CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

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

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

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

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

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

Shall be fined under this title or imprisoned not more than five 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.

PART C

FEDERAL PREVAILING WAGE RATES

[To be inserted before Agreement is signed]

PART D

EQUAL EMPLOYMENT OPPORTUNITY SPECIAL PROVISION

The Phase Developer shall comply with the requirements of this Part D (Equal Employment Opportunity Special Provision) to the extent it is applicable to the Predevelopment Work.

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Phase Developer's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Phase Developer's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time tables	Goals for minority participation for each trade	Goals for female participation in each trade
Term	(a) 23.6% for all Predevelopment Work performed in the State (excluding the American Legion Bridge); and (b) 28% for any Predevelopment Work performed on the American Legion Bridge or in the Commonwealth of Virginia.	6.9%

These goals are applicable to all of the Phase Developer's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Phase Developer performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Phase Developer also is subject to the goals for both its federally involved and non-federally involved construction.

The Phase Developer's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR §60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Phase Developer shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Phase Developer's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

Standard Federal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

1. As used in these specifications:
 - (a) "**Covered area**" means the geographical area described in the solicitation from which this contract resulted;
 - (b) "**Director**" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - (c) "**Employer identification number**" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941;
 - (d) "**Minority**" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Phase Developer, or any Contractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Phase Developer is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. The Phase Developer must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. The Phase Developer and each Contractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse the Phase Developer's or Contractor's failure to take good faith efforts to achieve the plan goals and timetables.
4. The Phase Developer shall implement the specific affirmative action standards provided in paragraphs 7 (a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Phase Developer should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered

construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Phase Developer is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Phase Developer has a collective bargaining agreement, to refer either minorities or women shall excuse the Phase Developer's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Phase Developer during the training period, and the Phase Developer must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Phase Developer shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Phase Developer's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Phase Developer shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - (a) ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Phase Developer's employees are assigned to work. The Phase Developer, where possible, will assign two or more women to each construction project. The Phase Developer shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Phase Developer's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities;
 - (b) establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Phase Developer or its unions have employment opportunities available, and maintain a record of the organizations' responses;
 - (c) maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Phase Developer by the union or, if referred, not employed by the Phase Developer, this shall be documented in the file with the reason therefor, along with whatever additional actions the Phase Developer may have taken;
 - (d) provide immediate written notification to the Director when the union or unions with which the Phase Developer has a collective bargaining agreement has not referred to the Phase Developer a minority person or woman sent by the Phase Developer, or when the Phase Developer has other information that the union referral process has impeded the Phase Developer's efforts to meet its obligations;

- (e) develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Phase Developer's employment needs, especially those programs funded or approved by the Department of Labor. The Phase Developer shall provide notice of these programs to the sources compiled under paragraph 7(b) above;
- (f) disseminate the Phase Developer's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Phase Developer in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed;
- (g) review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter;
- (h) disseminate the Phase Developer's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Phase Developer's EEO policy with other contractors and subcontractors with whom the Phase Developer does or anticipates doing business;
- (i) direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Phase Developer's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Phase Developer shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process;
- (j) encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Phase Developer's work force;
- (k) validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3;
- (l) conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities;
- (m) ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Phase Developer's obligations under these specifications are being carried out;

- (n) ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes;
 - (o) document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations;
 - (p) conduct a review, at least annually, of all supervisors' adherence to and performance under the Phase Developer's EEO policies and affirmative action obligations.
8. The Phase Developer is encouraged to participate in voluntary associations which assist in fulfilling one or more of its affirmative action obligations (paragraphs 7(a) through (p)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7(a) through (p) of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Phase Developer's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Phase Developer. The obligation to comply, however, is the Phase Developer's and failure of such a group to fulfill an obligation shall not be a defense for the Phase Developer's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Phase Developer, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Phase Developer may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Phase Developer has achieved its goals for women generally, the Phase Developer may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Phase Developer shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Phase Developer shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Phase Developer shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. If the Phase Developer fails to carry out such sanctions and penalties it shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Phase Developer, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Phase Developer fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Phase Developer shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

PART E

ON-THE-JOB TRAINING PROGRAM FOR FEDERAL-AID HIGHWAY CONSTRUCTION PROJECTS

The Phase Developer shall comply with the requirements of this Part E (On-the-job Training Program for Federal-Aid Highway Construction Projects) provision to the extent applicable to the Predevelopment Work.

As part of the Phase Developer's equal employment opportunity affirmative action program training shall be provided as follows:

1. The Phase Developer shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.
2. The number of trainees to be trained under the special provisions will be zero for the Predevelopment Work.
3. In the event that the Phase Developer subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the Phase Developer shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Phase Developer shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.
4. The number of trainees shall be distributed among the work classifications on the basis of the Phase Developer's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the Phase Developer shall submit to the State highway agency for approval the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the Phase Developer shall specify the starting time for training in each of the classifications. The Phase Developer will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.
5. Training and upgrading of minorities and women toward journeymen status is a primary objective of this Training Special Provision. Accordingly, the Phase Developer shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The Phase Developer will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Phase Developer is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.
6. No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The Phase Developer should satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used the Phase Developer's records should document the findings in each case.
7. The minimum length and type of training for each classification will be as established in the training program selected by the Phase Developer and approved by MDOT and the Federal Highway Administration. The State highway agency and the Federal Highway Administration

shall approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Phase Developer and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training shall also be considered acceptable provided it is being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Approval or acceptance of a training program shall be obtained from the State prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the division office. Some offsite training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

8. Except as otherwise noted below, the Phase Developer will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the engineer, reimbursement will be made for training persons in excess of the number specified herein. This reimbursement will be made even though the Phase Developer receives additional training program funds from other sources, provided such other does not specifically prohibit the Phase Developer from receiving other reimbursement. Reimbursement for offsite training indicated above may only be made to the Phase Developer where he does one or more of the following and the trainees are concurrently employed on a Federal-aid project; contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the offsite training period.
9. No payment shall be made to the Phase Developer if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the Phase Developer and evidences a lack of good faith on the part of the Phase Developer in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. It is not required that all trainees be on board for the entire length of the contract. The Phase Developer will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.
10. Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this Training Special Provision.
11. The Phase Developer shall furnish the trainee a copy of the program he will follow in providing the training. The Phase Developer shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

12. The Phase Developer will provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

PART F

CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

The undersigned certifies, on behalf of the [*the Phase Developer/ Key Participant / PD Equity Member*], 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; and
- (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 any 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, and shall include a copy of said form in its proposal or bid, or submit it with the executed Agreement or subcontract.

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.

- (a) The undersigned 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.
- (b) The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any.

In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

[●]

Name: [●]

Title: [●]

Entity Making Certification: [●]

Date: [●]

PART G

DEBARMENT CERTIFICATION

By executing the Agreement, the Phase Developer and its contractors (at all tiers) shall be deemed to have signed and delivered the following certification:

1. The undersigned certifies to the best of its knowledge and belief, that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1(b) of this certification; and
 - (d) 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.
2. Where the Phase Developer or a contractor is unable to certify to any of the statements in this certification, the Phase Developer or contractor shall attach a certification, stating that it is unable to provide the certification and explaining the reasons for such inability.

PART H

OTHER FEDERAL AND STATE REQUIREMENTS

1. NON-DISCRIMINATION

In accordance with §13-219 of the State Finance and Procurement Article of the Annotated Code of Maryland, the Phase Developer shall:

- (a) prohibit discrimination in any manner against an employee or applicant for employment because of sex, race, age, color, creed, or national origin;
- (b) require Contractors to include a similar clause in every contract except a subcontract for standard commercial supplies or raw materials; and
- (c) require each contractor or subcontractor that is subject to this provision to post conspicuously a notice that sets forth the provisions of this provision in a place that is available to employees and applicants for employment.

2. TRAFFICKING IN PERSONS

- (a) To the extent applicable, the Phase Developer agrees to comply with, and assures the compliance of each Contractor with, the requirements of §106(g) of the Trafficking Victims Protection Act of 2000 ("**TVPA**"), as amended, 22 U.S.C. §7104(g), and the provisions of said subsection (g) consistent with U.S. OMB guidance, "Award Term for Trafficking in Persons", 2 C.F.R. Part 175.
- (b) For the purposes of this Section 2 (Trafficking in Persons), the Phase Developer agrees that:
 - (i) "**Employee**" an individual who is employed by the Phase Developer or any Contractor (including subcontractors) under this Agreement;
 - (ii) "**Forced labor**" means labor the recruitment, harboring, transportation, provision, or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery;
 - (iii) "**Private entity**" means:
 - (A) any entity other than a State government of the United States, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25; and
 - (B) includes a for-profit organization, and also a non-profit organization, including any non-profit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR § 175.25(b).
 - (iv) "**Severe forms of trafficking in persons**" has the meaning given a section 103 of the TVPA, as amended, 22 U.S.C. §7102(9).
 - (v) "**Commercial sex act**" has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(4).

- (vi) **"Coercion"** has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102(3).
- (c) The Phase Developer agrees:
- (i) to inform MDOT immediately of any information it receives from any source alleging a violation of a prohibition in 22 U.S.C. §7104(g);
 - (ii) that MDOT may terminate this Agreement if the Phase Developer, a Contractor, or other participant at any tier, or an employee of any of them, violates the provisions of 22 U.S.C. §7104(g);
 - (iii) that neither it, its Contractors, or other participants at any tier, or the employees of them, will engage in "severe forms of trafficking in persons" during the period of time that this Agreement is in effect;
 - (iv) that neither it, its Contractors, or other participants at any tier, or the employees of any of them, will procure a "commercial sex act" during the period of time that this Agreement is in effect;
 - (v) that neither it, its Contractors, or other participants at any tier, or the employees of any of them, will use "forced labor" in the performance of this Agreement or any Contract; and
 - (vi) that the provisions of this Section 2 (Trafficking in Persons) will be included in all Contracts and any other arrangement under this Agreement at any tier.

EXHIBIT 17

PREDEVELOPMENT DBE PARTICIPATION PLAN

PART A – PREDEVELOPMENT DBE PARTICIPATION PLAN REQUIREMENTS

- (a) The Predevelopment DBE Participation Plan shall describe the methods to be employed by the Phase Developer for achieving the DBE participation goal for the Predevelopment Work.
- (b) The Predevelopment DBE Participation Plan shall be subject to review, comment, and approval by MDOT as a condition precedent to the Effective Date.
- (c) The Predevelopment DBE Participation Plan shall include the following:
 - (i) the specific categories of services and work anticipated for DBE participation under the Agreement;
 - (ii) procedures to enhance, to the extent possible, DBE participation in the Predevelopment Work;
 - (iii) the DBE firms that will be used for the Predevelopment Work to the extent known at the time of submitting the plan (that are consistent with the DBE Participation Schedule);
 - (iv) the name, experience, and qualifications of the Phase Developer's Predevelopment Diversity Manager;
 - (v) identify the duties of the Phase Diversity Manager under the Agreement;
 - (vi) detail how the Phase Developer will conduct DBE outreach; and
 - (vii) the methods and procedures for how the Phase Developer will ensure compliance with its DBE obligations under Section 19.9 (Disadvantaged Business Enterprise) of the Agreement.
- (d) The Predevelopment Diversity Manager will be the individual with full responsibility for ensuring compliance with all State and Federal diversity requirements including:
 - (i) overseeing all aspects of the DBE program, monitoring DBE participation, and ensuring DBE compliance;
 - (ii) administering the EEO program and ensuring compliance with EEO requirements; and
 - (iii) overseeing workforce development programs, training, and apprenticeship programs (including on-the-job training requirements).
- (e) The Predevelopment Diversity Manager will be required for the duration of the Predevelopment Work and be committed full time.
- (f) The Predevelopment Diversity Manager must possess the following minimum qualifications:
 - (i) minimum five years' experience in DBE compliance, equal employment opportunity compliance, Title VI and Title VII of the Civil Rights Act 1964 experience and on-the-job training compliance;
 - (ii) experience working on a P3 project that met the DBE goals; and

(iii) a bachelor's degree or equivalent.

PART B – PREDEVELOPMENT DBE PARTICIPATION PLAN

[To be inserted before Agreement is signed]

EXHIBIT 18

KEY ASSUMPTIONS FOR PHASE SOUTH A

For the purposes of this Agreement, each of the following shall be deemed to be a "Key Assumption" for Phase South A for the purposes of Article 12 (Phase South A Key Assumptions) of the Agreement:

- (a) Two-Lane, Priced Managed Lanes Network on I-495. Consistent with all the "build" alternatives currently under consideration in the MLS Draft EIS.
- (b) With respect to the Bistate Agreement between MDOT and VDOT, the Section Developer will assume all:
 - (i) Capital Costs between the George Washington Memorial Parkway and River Road (as shown in the DEIS Technical Reports, Appendix D, Maps 56 through 60); and
 - (ii) collection of all revenues, applying Maryland's toll policy.
- (c) The total cost of acquiring MDOT Provided Parcels (as defined in the Section P3 Agreement Term Sheet) is \$12,000,000.
- (d) All utility relocation work required for Phase South will be undertaken by the Section Developer and at the Section Developer's cost.
- (e) The Section Developer will not be required to carry out any Transit Service Improvements as part of the scope of work for Phase South.²⁶
- (f) Following the conclusion of the toll rate hearing process, the MDTA Board adopts tolling rates for Phase South that are consistent with the contents of MDTA's letter to the Proposers dated December 18, 2020.
- (g) Private Activity Bonds allocated for Phase South A are not less than 25% of Capital Costs.
- (h) Invitation from USDOT Build America Bureau to submit a TIFIA loan application prior to the date falling five months before the Predevelopment Milestone Deadline relating to Financial Close of the relevant Section provided this is not due to the Phase Developer's failure to deliver a Committed Section Proposal prior to the relevant Predevelopment Milestone Deadline.

²⁶ This assumption is included on the basis that, at the time of submitting its Proposal the form, scope and cost of the Transit Service Improvements was unknown and accordingly the Proposal could not take into account the Transit Service Improvements. The Committed Section Proposal for a Section will include any Transit Service Improvements that MDOT requires the Phase Developer to include in that Section.