STATE OF LOUISIANA
LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
CONTRACT FOR SERVICES
LTRC PROJECT NO. _____, SIO NO. _____
NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE FORMULA PROGRAM

THIS CONTRACT made and entered into this _____ day of _____, 2024, by and between the Louisiana Department of Transportation and Development, Louisiana Transportation Research Center, hereinafter referred to as "LADOTD/LTRC," and CONSULTANT NAME AND ADDRESS, hereinafter referred to as "Consultant."

Under Authority granted by Part XIII-A of Title 48 of Louisiana Revised Statutes, the LADOTD/LTRC has elected to engage the Consultant to perform, and the Consultant agrees to perform the services described in the Scope of Contract Services under the terms and conditions, and for the compensation as stated in this Contract.

ENTIRE AGREEMENT

This Contract together with the advertisement of the Request for Proposals (RFP) dated _____, the Consultant proposal including work hour and compensation submitted and approved by LADOTD/LTRC, the LTRC Manual of Research Procedures, Publication Guidelines, and any attachments and exhibits are specifically incorporated herein by reference and constitute the entire agreement between the parties with respect to the subject matter. However, in the event of a conflict between the terms of this Contract and the referenced documents, this Contract governs. References to LADOTD/LTRC in this Contract may refer to agents, consultants, or other third-parties authorized by LADOTD/LTRC.

See **Attachment A – Order of Precedence**.

PROJECT IDENTITY

LTRC Project No. _____ and Statistical Internal Order No. _____ has been assigned to this special services contract. All invoices and correspondence in connection with this contract shall be identified by these project numbers.

SCOPE OF CONTRACT SERVICES

The objective of this project (the "Project") is the installation, operation, and maintenance of one or more publicly accessible Direct Current Fast Charging ("DCFS") (Level 3) facilities which meet all federal requirements for charging infrastructure funded as part of the National Electric Vehicle Infrastructure ("NEVI") formula program administered by the Federal Highway Administration ("FHWA"). NEVI Standards and Requirements described in 23 C.F.R. Part 680, *et seq.* ("NEVI Final Rule") detail responsibilities of the Consultant, provide definitions for terms and acronyms used herein, and are incorporated herein by reference and attached hereto as **Attachment C – NEVI Final Rule**. The project site(s) must be located within a one-mile travel distance from the end of an interchange off-ramp to the entrance of the site property, at one of the exit numbers listed in a Corridor Group described in Attachment 2 to the Request for Proposals ("RFP") in order to build-out FHWA-designated Alternative Fuel Corridors ("AFCs").

LADOTD/LTRC will not share ownership of the charging facilities nor share in any revenue generated; however, LADOTD/LTRC retains the right to monitor and inspect all business operations that impact program income and revenue as outlined in the NEVI Final Rule.

The Consultant will be responsible for performing the services as ordered by LADOTD/LTRC in accordance with the terms of this contract under the direct administration of a LADOTD/LTRC "Project Manager" who will be identified when the work is authorized in the Notice to Proceed.

DELIVERABLES

Deliverables for this contract will include:

1) Project. Consultant shall install, operate, and maintain all DCFCs (Level 3) charging stations and facilities in compliance with 23 C.F.R. §680, *et seq*. and FHWA Form 1273, incorporated herein by reference and attached hereto as Attachments C and D, respectively, and all other applicable federal requirements. The work performed pursuant to this contract will be financed in whole or in part with Federal funds, and therefore 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 such work. The "Required Contract Provisions, Federal-Aid Construction Contracts, Form FHWA 1273," is included as Attachment D and incorporated as provisions to this Contract. Whenever, in said required contract provisions, references are made to:
    a. "contracting officer" or "authorized representative," such references shall be construed to mean LADOTD/LTRC or its Authorized Representative;
    b. "contractor," "prime contractor," "bidder," "Federal-aid construction contractor," "prospective first tier participant," or "First Tier Participant," such references shall be construed to mean Consultant or its authorized representative;
    c. "contract," "prime contract," "Federal-aid construction contract," or "design-build contract," such references shall be construed to mean the Contract between the Consultant and LADOTD/LTRC;
    d. "subcontractor," "supplier," "vendor," "prospective lower tier participant," "lower tier prospective participant," "Lower Tier participant," or "lower tier subcontractor," such references shall be construed to mean any Subcontractor or Supplier; and
    e. "department," "agency," "department or agency with which this transaction originated," or "contracting agency," such references shall be construed to mean LADOTD/LTRC, except where a different department or agency or officer is specified.
2) Equipment Requirements.
    a. Charging Site Minimum Specifications. The charging site must meet the following minimum requirements:
        i. A charging site shall be comprised of a minimum of four DC fast charging ports that support output voltages between 250 volts DC and 920 volts DC.
        ii. DCFCs located along and designed to serve users of designated AFCs must have a continuous power delivery rating of at least 150 kW and supply power according to an EV's power delivery request up to 150 kW, simultaneously from each charging port at a charging station.
        iii. These corridor-serving DCFC charging stations may conduct power sharing as long as each charging port continues to meet an EV's request for power up to 150

kW.

iv. Consultant will provide all staffing, material, training, hardware, and software necessary to operate each NEVI-compliant DC (Level 3) fast charging site.

v. Charging at the site is available 24 hours a day, 365 days a year according to Uptime requirements.

vi. EVSE minimum specifications are further described in 23 C.F.R. §680, *et seq*.

b. Proposed Modifications to System Specifications. This Contract includes EVSE Specifications that are compliant with the NEVI Formula program. The Consultant may only use EVSE that deviate from the Contract minimum requirements if LADOTD/LTRC approves modifications in writing.

c. Equipment Ownership. Upon completion of construction and installation and Notice of Acceptance by LADOTD/LTRC of fully operational EVSE (including power and data service) the Consultant shall own or lease the EVSE equipment. Consultant shall ensure there is a separate and distinct utility-grade meter for the EVSE system.

3) Five-Year Operations and Maintenance Obligation. Consultant shall be required to ensure the operations and maintenance of the EVSE at the site for a period of at least five years from the date identified on the Notice of Acceptance letter. Compliance with the 97 percent Uptime requirement throughout the five-year operations and maintenance period is essential.

a. Consultant shall comply with a five-year operations and maintenance contract, network subscription, and submittal of invoices from Power Company.

b. Consultant shall acquire a five-year service contract from a qualified contractor, as defined by 23 CFR 680.106(j), in compliance with the NEVI Final Rule, providing 100% coverage of labor, parts and materials as well as emergency maintenance service. This contract shall include comprehensive preventative maintenance for the covered equipment, systems, repair, and replacement coverage (sometimes called a "breakdown" insurance policy) for the covered equipment.

c. Operation and Maintenance funds, network subscription funds, and power costs will be 80% reimbursed annually at the end of each 12 month period following Final Acceptance for each station and only after the Consultant has submitted operations and maintenance reports documenting they met operations and performance requirements. Proof of Service Level Agreement (SLA) and network subscription will be required for reimbursement. Monthly invoices from the power company are required annually for 80% reimbursement.

d. If the Consultant is unable to fulfill the five (5) year obligation to operate and maintain the facilities and/or improvements, then LADOTD/LTRC reserves the right to pursue any remedies available under the law to recover funds, including but not limited to recovery from the performance bond.

4) Emergency Incident Reporting Requirement. LADOTD/LTRC must be notified within 24 hours after the Consultant becomes aware of any of the following critical events:

a. One or more charging plugs are inoperable for more than 24 hours.

b. All publicly available DC fast charging plugs at the site are inoperable for more than 15 minutes.

c. One or more pieces of equipment essential to the operation of the charging units/station experience a system failure, or

d. Other incidents related to charging electric vehicles such as:

i. Damage to an electric vehicle as a result of connecting to or receiving electricity

from the station,

ii. Any other safety related incident, such as an accident or fire, at or near the charging station, or

iii. Any time emergency responder personnel are dispatched to or near the charging station.

5) Customer Service. Consultant shall ensure that customer service is provided and available 24 hours per day, 7 days a week. Customer service shall provide support and responses to inquiries and comments from EVSE users who are using or attempting to use the EVSE charging equipment. Quarterly reports by Consultant must include key performance indicators (KPI) for monitoring and to ensure quality performance of customer service (e.g., number of calls, length of calls, customer problem areas, a log of all customer service activities, etc.).

6) Project Revenue and Pricing for EV Charging.

   a. Consultant must provide sufficient information for LADOTD/LTRC to evaluate and confirm that Project revenue will be used in accordance with the Final NEVI Federal Rule. Any material decreases in costs or increases in revenues must be reported to LADOTD/LTRC for review and confirmation that the Project remains in compliance with the Final Nevi Federal Rule and other applicable requirements.

   b. Project Revenue. As per § 680.106(m) of the Final Nevi Federal Rule, Consultant may use revenue generated from the operation of charging stations for debt service, a reasonable return on investment, and/or costs for operation, maintenance, and site improvement.

   c. Profits in excess of 10% of costs from operation of charging stations must be justified in writing.

   d. Profits in excess of 25% of costs from operation of charging stations will be considered an unreasonably high return on investment.

   e. End User Pricing for EV Charging. In consideration of the financial assistance provided by LADOTD/LTRC, Consultant agrees that the price charged to end users for EV charging shall be reasonable. If LADOTD/LTRC has reason to believe that Consultant is charging an unreasonable rate, LADOTD/LTRC will notify the Consultant. As soon as possible after notification, but in no case more than seven calendar days, Consultant shall contact LADOTD/LTRC to meet and discuss LADOTD/LTRC's concerns. If LADOTD/LTRC requests, then Consultant shall develop and implement a corrective action plan. Repeated non-compliance with the reasonable charging fee requirement may be considered an event of default. Notwithstanding anything to the contrary contained in this Contract, if the Consultant is out of compliance with these terms, LADOTD/LTRC may terminate this Contract, and if the termination occurs within the five-year operations and maintenance obligation, then LADOTD/LTRC reserves the right to pursue any remedies available under the law to recover funds, including but not limited to recovery from the performance bond.

7) Security.

   a. Consultant must implement physical and cybersecurity strategies consistent with the Louisiana Electric Vehicle Infrastructure Deployment Plan to ensure charging station operations protect consumer data and protect against the risk of harm to, or disruption of, charging infrastructure and the grid.

   b. Physical security strategies may include topics such as lighting; siting and station design to ensure visibility from onlookers; driver and vehicle safety; video surveillance;

emergency call boxes; fire prevention; charger locks; and strategies to prevent tampering and illegal surveillance of payment devices.

c. Physical security must include, as defined in NIST Special Publication 800-53 Revision 5 "Security and Privacy Controls for Information Systems and Organizations":
    i. Must utilize anti-tamper techniques to prevent, deter, and detect unauthorized physical access. [DOT 5.2.4 (SSH-06); NIST 800-53 Rev5: AT-3(2), PE-3; ENCS 4.3.1; DOE 8.1 (8.1.1, 8.1.2)]
    ii. Unexpected or unauthorized accesses must be immediately communicated. [DOE A.2; NISTIR]
d. Consultant shall be responsible for cybersecurity as it relates to owning, operating, maintaining, and data sharing for the EVSE. Consultant's implementation of cybersecurity strategies must be consistent with **Attachment B – Cybersecurity Requirements for Internet Service and EV Charging Providers**.
e. Consultant shall participate in a privacy impact assessment with LADOTD/LTRC and share the following:
    i. How cybersecurity will be assessed throughout the Contract term,
    ii. Results of third-party cybersecurity testing (not proprietary information that would make the overall system vulnerable),
    iii. How system updates will affect end users, and
    iv. Proposed protocols for notifying LADOTD/LTRC of any security breach.
f. Cybersecurity strategies may include the following topics: user identity and access management; cryptographic agility and support of multiple PKIs; monitoring and detection; incident prevention and handling; configuration, vulnerability, and software update management; third-party cybersecurity testing and certification; and continuity of operation when communication between the charger and charging network is disrupted.
g. Cybersecurity strategies must include the following protocols, as defined in NIST Special Publication 800-53 Revision 5 "Security and Privacy Controls for Information Systems and Organizations":
    i. Identity, Credential, and Access Management. [23 CFR §680.114(a)(2); 23 CFR §680.106(h)(2)]
        1. Access must be authenticated and authorized. [NIST 800-53 Rev5: AC-2; IA-2, IA-3]
        2. Must use multi-factor authentication. [NIST 800-53: IA-2, IA-5]
    ii. Configuration, Vulnerability, and Update Management. [23 CFR §680.106(h)(2); 23 CFR §680.114(a)(2) and (3)]
        1. Authenticity and integrity of applied updates must be ensured and violations are reported. [NIST 800-53 Rev5: SA-22; NIST 800-40v2]
        2. Security updates must be timely applied. [NIST 800-53 Rev5: SI-7]
    iii. Secure Payment. [23 CFR §680.106(f)]
        1. Payment systems must comply with current payment card industry security standards. [PCI DSS v4.0]
        2. Payment terminals must be EMVCo L1 Certified. [EMV]
    iv. Secure Communications. [23 CFR §680.114(a)-(d); 23 CFR §680.106(l); 23 CFR §680.106 (h)(2); 23 CFR 680.114(a)(2)]
        1. Must use standardized secure communication protocols utilizing modern encryption. [NIST 800-53 Rev5: SC-13]

2. Personal information will be minimally collected and must be protected throughout its life cycle. [NIST 800-53 Rev5:AC-16]

v. All data must reside in the United States throughout its life cycle and is administered by those who have undergone background screening. [CSA; FedRAMP; NIST 800-53 Rev5: PS-3, SA-9(4), SA-9(5)]

h. Consultant, including but not limited to any subcontractors or operators, shall only collect, process, and retain personal information that is strictly necessary to provide charging services to a customer and shall take reasonable measures to safeguard customer data.

8) Reporting Requirements.

a. Quarterly Reporting. Consultant must provide all data required by the NEVI Final Rule to LADOTD/LTRC on a quarterly basis. Quarterly reports are due one month following the end of the quarter unless an extension is approved in writing by LADOTD/LTRC. Required quarterly information includes but may not be limited to:

i. The charging station name or identifier used to identify the charging station in data made available to third-parties in 23 C.F.R. §680.116(c)(1);
ii. The charging port identifier used to identify the charging port in data made available to third-parties in 23 C.F.R. §680.116(c);
iii. Charging session start time, end time, and any error codes associated with an unsuccessful charging session by port;
iv. Energy (kWh) dispensed to EVs per charging session by port;
v. Peak session power (kW) by port;
vi. Payment method associated with each charging session;
vii. Charging station port uptime, T_outage, and T_excluded calculated in accordance with the equation in 23 C.F.R. § 680.116(b) for each of the previous three months; and
viii. Duration (minutes) of each outage.

b. Annual Reporting. Consultant must provide an annual report to LADOTD/LTRC that includes all data required by the NEVI Final Rule to LADOTD/LTRC on an annual basis. Annual reports are due on or before March 1, in a manner prescribed by FHWA. Required annual information includes but may not be limited to:

i. Maintenance and repair cost per charging station for the previous year;
ii. An annual report summarizing operation and maintenance activities. Such report shall be submitted on or before June 30th of each fiscal year for five (5) years; and
iii. Identification of and participation in any State or local business opportunity certification programs including but not limited to minority-owned businesses, Veteran-owned businesses, woman-owned businesses, and businesses owned by economically disadvantaged individuals.

c. One-time Report. The following data must be submitted once for each charging station, on or before March 1 of each year, in a manner prescribed by the FHWA. Any one-time data made public will be aggregated and anonymized to protect confidential business information.

i. The name and address of the private entity(ies) involved in the operation and maintenance of chargers.
ii. Distributed energy resource installed capacity, in kW or kWh as appropriate, of

asset by type (e.g., stationary battery, solar, etc.) per charging station

iii. Charging station real property acquisition cost, charging equipment acquisition and installation cost, and distributed energy resource acquisition and installation cost

iv. Aggregate grid connection and upgrade costs paid to the electric utility as part of the project, separated by:

1. Total distribution and system costs, such as extensions to overhead/underground lines, and upgrades from single-phase to three-phase lines; and
2. Total service costs, such as the cost of including poles, transformers, meters, and on-service connection equipment.

d. Data Sharing. LADOTD/LTRC is required to provide both quarterly and annual data submittals as per § 680.112 of the NEVI Final Rule. Consultant must prepare and provide all data required to complete the quarterly and annual reports.

9) Permitting and Third-Party Agreements. LADOTD/LTRC will obtain environmental approvals for the site related to the Project as required by the National Environmental Protection Act ("NEPA"). Consultant shall be responsible for obtaining all permits and third-party agreements for the site.

10) Licenses. Consultant shall be licensed as required by applicable federal and state laws, rules, and regulations including, but not limited to, Louisiana Revised Statutes Section 48:250.3(B). Evidence of proper licensing shall be required to be provided prior to execution of the Contract.

11) Design and Construction Review. The design and construction of the Project are subject to LADOTD/LTRC's review and approval, including costs, materials, plans, specifications, design, and operational details. LADOTD/LTRC reserves the right to specify or make determinations as to the standards, methods, techniques, design, and dimensional criteria acceptable in the Project. Failure to meet special conditions, performance criteria, or specifications may result in the withdrawal of the funding, disqualification from future consideration for a grant, or declaration of a Consultant to be in default of the terms of this Contract.

12) Construction Progress Schedule. Prior to or at the preconstruction conference and before beginning work on the Project, the Consultant shall submit to the project engineer a Construction Progress Schedule giving a satisfactory schedule of operations that provides for completion of the work within the contract time. The contractor shall have copies of the schedule available at the preconstruction conference.

a. If the Consultant's operations are affected by changes in the plans or amount of work, or if the Consultant has failed to comply with the approved schedule, or if requested by the engineer, the Consultant shall submit a revised Construction Progress Schedule for approval. This revised schedule shall show how the Consultant proposes to prosecute the balance of the work. If the engineer requests a revised schedule, the Consultant shall submit the revised schedule within 14 calendar days after the date of request or progress payments may be withheld.

b. The approved Construction Progress Schedule will be used as the basis of establishing the controlling item of work, charging contract time and as a check on the progress of the work. The Construction Progress Schedule shall show only one controlling item of work for each contract day. If the Construction Progress Schedule has not been approved prior to the issuance of the Notice to Proceed, the engineer will establish the controlling work item and charge contract time accordingly.

13) Testing and Inspection.
    a. Testing. Consultant shall ensure that standard factory testing and post-installation system testing is conducted for each charging unit to verify functionality of the EVSE. In addition, Consultant shall ensure access and/or integration into the LADOTD/LTRC or other prescribed data sharing systems. Factory test results shall be provided for each unit as verified by the Consultant's quality assurance or test manager. Similar test results for the installed system shall be provided with the test manager's approval. LADOTD/LTRC will also have the right to test the EVSE and any data sharing connections (LADOTD/LTRC systems and/or Consultant provided portal). For data sharing, LADOTD/LTRC will participate in the testing through verification of receipt of the specified data. For the charging unit, LADOTD/LTRC may run on-site testing at its own expense.
    b. Inspection. Consultant agrees to allow LADOTD/LTRC to perform periodic inspections of its charging stations to ensure the stations are operable and compliant with federal requirements. Consultant shall allow LADOTD/LTRC access to all documents, in whatever form, necessary for reporting purposes and ensuring compliance with federal and contractual requirements. LADOTD/LTRC, FHWA, and/or any person designated or authorized by LADOTD/LTRC has the absolute right to inspect the Project sites, proposed Project sites, records, and construction materials relating to the Project. An inspection ordered or conducted by LADOTD/LTRC may include reproduction and examination of records, taking samples, and assessing any factor relevant to the Project, Consultant's Proposal, or Contract terms. Consultant's denial of access to records, failure to produce records, or obstruction of an inspection may result in termination of the Contract and/or disqualification from future consideration for grants.

14) Maintenance and Operation of Improvements.
    a. Consultant's Responsibilities. Consultant shall operate and maintain, at its sole cost and expense, all completed Project improvements financed under this Contract for the full five-year operation and maintenance period. Consultant shall perform the maintenance to ensure an acceptable level of physical integrity and operation consistent with original design standards. Consultant certifies that it shall make available sufficient funds to provide the operations and maintenance and that it shall have and keep in place a full-coverage service contract for the entire five-year operations and maintenance period.
    b. Transfer of Ownership and Maintenance Responsibilities. Consultant may transfer ownership and maintenance responsibilities for the equipment and other improvements constructed pursuant to the Contract, subject to prior approval by LADOTD/LTRC following thirty-day written notice to LADOTD/LTRC of intent to transfer. LADOTD/LTRC shall determine the appropriate written documentation required to approve and authorize the transfer of ownership and maintenance responsibilities (including reporting and customer service obligations). LADOTD/LTRC shall not unreasonably withhold its approval.
    c. Uptime Requirement. During the five-year operation and maintenance period, other than allowable downtime for maintenance, vandalism, and natural disasters, charging equipment must be fully operational greater than 97 percent (97%) of the time on average, annually, as per § 680.116(b) of the Federal Rule. Uptime shall be self-monitored by Consultant and reported to LADOTD/LTRC if this requirement is not met.
        i. LADOTD/LTRC may notify Consultant if it has reason to believe the Uptime

requirement is not being met and require Consultant to develop an action plan to bring the equipment back to working condition and improve system Uptime to the required level. Consultant shall implement the action plan.

ii. Material or repeated non-compliance with the Uptime requirements may be considered an event of default. Notwithstanding anything to the contrary contained this Contract, if Consultant is in default of the Uptime requirement, LADOTD/LTRC may terminate this Contract.

d. Failure to Maintain. If LADOTD/LTRC determines that Project sites are not in a state of good condition, LADOTD/LTRC shall notify Consultant in writing. Consultant shall begin necessary work as soon as possible, but not more than fourteen (14) calendar days, after receipt of LADOTD/LTRC's notice, for items it does not dispute and notify LADOTD/LTRC in writing of items it does dispute. The parties shall promptly communicate and meet to resolve disputed items. Consultant shall pay the cost to repair the damages without reimbursement from LADOTD/LTRC. Consultant shall complete the undisputed work as promptly as reasonably possible but in no event later than twenty-four (24) calendar days after LADOT/LTRC's written notice. Consultant may request an additional cure period to address deficiencies identified by LADOTD/LTRC. Approval of a cure period request, including extensions, is at LADOTD/LTRC's discretion.

e. If the average annual uptime for a charging port is less than or equal to 97%, LADOTD/LTRC will assess liquidated damages.

15) Consultant shall furnished good and solvent bond in an amount not less than one hundred percent (100%) of the amount of the contract for the faithful performance of Consultant's duties in a form and with a qualified surety to the satisfaction of DOTD. Consultant shall maintain the performance bond and provide a certificate evidencing the performance bond annually. Failure to furnish the performance bond may be grounds for terminating this Contract. The performance bond under this Contract shall adhere to the requirements set forth in La. Admin. Code Title 34 §323.

Add any additional deliverables, terms, or site specific information.

CONTRACT TIME

The consultant shall proceed with the services specified herein after the execution of this Contract and upon written Notice-to-Proceed (NTP) from the LADOTD/LTRC and shall be completed within _____calendar months, which includes review time. The delivery schedule for all project deliverables will be established by the Project Manager.

COMPENSATION

Compensation to the Consultant for services rendered in connection with this Contract shall be made on the basis of reimbursement for 80% of eligible project costs with a maximum limitation of **$**_____ to be reimbursed.

The Consultant shall submit monthly invoices which shall be in accordance with the LTRC Manual of Research Procedures for work accomplished towards the completion of project tasks.

1) Maximum Amount of Reimbursement. The maximum amount of reimbursement to the Consultant is $_____, or 80% of eligible, actual, reasonable, and necessary project costs based on the approved budget, whichever is less. Consultant is responsible for project costs exceeding this amount.
2) Consultant is required to match the grant funding with a minimum of 20% of the eligible, actual, reasonable, and necessary project costs based on the approved budget from non-federal sources.
3) When costs are submitted for reimbursement, they will be reviewed for eligibility by LADOTD/LTRC to ensure conformance with 2 C.F.R. Part 200 *et seq.*, the NEVI Final Rule, and FWHA guidance.
4) The following list of eligible and ineligible costs reflect LADOTD/LTRC's current understanding of Federal guidance, however, no costs deemed ineligible pursuant to 2 C.F.R. Part 200 *et seq*., the NEVI Final Rule, or other applicable standards will be eligible for reimbursement.
    a. Eligible costs include those incurred following a site award and may include acquisition, installation, operations/maintenance and network subscriptions for infrastructure for the first 5 years of operation, including:
        i. DC fast charging equipment costs. Chargers must be purchased and not leased;
        ii. Utility infrastructure upgrade costs, including components to connect the charger to the power source, transformers and other on-site equipment for power, costs to acquire and install service, equipment, and upgrades (e.g., power meter, transformer, switch gear), minor grid upgrades to connect the charger to the grid distribution network (e.g., extending power lines or upgrading existing lines);
        iii. Site preparation and construction costs directly related to the charging of vehicles (concrete slab, conduit, wiring, drainage);
        iv. Signage;
        v. Lighting;
        vi. Site layout and design. Per federal rule, final design and construction costs for installations are eligible after National Environmental Policy Act (NEPA) processing is completed;
        vii. Permitting fees related to the charger;
        viii. Cellular/Internet network infrastructure upgrade fees;
        ix. Operations/Maintenance and network subscription costs, including service agreements with qualified contractors and charging equipment manufacturers or warrantors;
        x. On-site energy storage to transfer power to and from the EV charger (on-site distributed energy resource (DER) equipment directly related to vehicle charging) (Battery-integration);
        xi. Clean fuel backup power sources;
        xii. Pre-construction costs associated with environmental review and preliminary engineering;
        xiii. Purchase of proprietary adapters that meet the following criteria:
            1. Directly or indirectly compatible with a J3400 connector to a permanently attached Combined Charging System (CCS) connector
            2. Approved by the charger manufacturer to ensure consistency, safety, and reliability
            3. Fully integrated into the charger such that it cannot be removed from the

site
4. Other operating costs that are necessary and directly related to the charging of electric vehicles.

b. Ineligible costs include:
   i. Any costs incurred before the fully executed Contract related to submitting the proposal application, design and construction for site installations, are not eligible for reimbursement;
   ii. Costs not directly related to charging of vehicles;
   iii. Costs for construction or general maintenance of building and parking facilities (if not directly related to charging of vehicles);
   iv. Variable operating and maintenance costs, including costs for insurance and other recurrent business costs such as staffing;
   v. Construction or maintenance of buildings;
   vi. Costs of major grid upgrades (longer line extension or upgrades, improvements to offsite power generation, bulk power transmission, substations, or beyond what is required to connect a charging station to the electric grid distribution network);
   vii. Any Project costs covered by the utility, including utility service upgrade costs;
   viii. Costs for studies or research projects; and
   ix. Costs for property purchase or rental.

5) Milestones. Consultant is responsible for incurring 100% of the upfront costs of each milestone, and is then reimbursed up to 80% of the eligible, actual, reasonable, and necessary costs based on the approved budget after each milestone is reached and LADOTD/LTRC approves the Consultant's submitted invoices.
   a. Reimbursement may only occur after funds are expended and appropriate documentation, as determined by LADOTD/LTRC, is submitted for reimbursement.
   b. Reimbursable work may not begin until a Notice to Proceed has been issued.
   c. Consultant is eligible for operation and maintenance reimbursements for the duration of the mandatory five-year period. Consultant may submit operations and maintenance reimbursement requests to LADOTD/LTRC on an annual basis.
   d. The following are payment milestones:
      i. Design and Permitting Completed
      ii. Utility Infrastructure Improvements Completed
      iii. Site Preparation and Construction Competed
      iv. EVSE Hardware and Software Completed
      v. Operations and Maintenance, Network Subscription an Power (Annually)
   e. If Consultant fails to produce a useable unit of work then LADOTD/LTRC reserves the right to pursue any remedies available under the law to recover funds, including but not limited to recovery from the performance bond.
6) Liquidated Damages
   a. Each charging port shall have an average annual uptime greater than 97%.
   b. Uptime calculations are defined in 23 CFR 680.116(b).
   c. If the average annual uptime for a charging port is less than or equal to 97%, LADOTD/LTRC will assess liquidated damages pursuant to the following table based on the number of days of "downtime" for each charging port during an annual period. The liquidated damages will be assessed against O&M, Network, and Power Invoice payment due to the Awardee annually.

Range Uptime	Average Annual Percentage	# of days per Year in Range	Amount of Liquidated Damages Per Site
1	> than 97%	[11]	N/A
2	80% to </= 97%	[62]	33% of Previous Year O&M, Network Subscription and Power Invoices
3	50% to < 80%	[110]	66% of Previous Year O&M, Network Subscription and Power Invoices
4	< 50%	[182]	100% of Previous Year O&M, Network Subscription and Power Invoices

7) Liability, Forfeiture of Funds, Repayment.
   a. Improper Use. If Consultant fails to comply with the terms and conditions of this Contract, the Consultant shall immediately reimburse LADOTD/LTRC the amount demanded by LADOTD/LTRC, up to the total amount of payments to Consultant. LADOTD/LTRC may, at the discretion of the Secretary, disqualify the Consultant from future consideration for grants or other opportunities to contract with LADOTD/LTRC. A Consultant aggrieved by a LADOTD/LTRC decision under this section may appeal the decision pursuant to LADOTD/LTRC policies and Louisiana state law.
   b. Payment Reduction. If LADOTD/LTRC determines, by audit or otherwise, which determination shall be conclusive, that the financial participation properly attributable to the NEVI Formula Program is less than the amount authorized for reimbursement, the Consultant shall, at LADOTD/LTRC's request, refund to LADOTD/LTRC the amount by which the reimbursement exceeds the justified financial participation within 60 days of LADOTD/LTRC's demand. In lieu of these requirements, LADOTD/LTRC may, by letter, adjust the amount of funds authorized for reimbursement under this Contract to reflect the actual justified amount.

PAYMENT

Payments to the Consultant for services rendered by the Consultant shall be made per the schedule provided above. The payments shall be based on a standard certified correct invoice. Invoices reflecting the amount and value of work accomplished to the date of such submission shall be submitted directly to the Project Manager. The invoice shall also show the total of previous payments on account of this contract, and the amount due and payable as of the date of the current invoice.

A principal member of the Consultant to whom the contract is issued must sign, date, and certify the invoice for correctness. The original and three copies of each invoice shall be submitted to the Project Manager.

Upon receipt and approval of each invoice, the LADOTD/LTRC shall check the invoice for correctness and return if required; upon acceptance and approval of a standard certified correct invoice, for services satisfactorily performed, the LADOTD/LTRC shall pay the amount shown to be due and payable within 30 calendar days, in accordance with Louisiana R.S. 48:251.5.

PUBLICATION OF DATA

The following provisions shall govern publication of resultant data from each contract research project.

(1) The author shall be free to copyright material developed under each contract with the provision that the State and all other Governmental funding agencies reserve a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work for Government purposes.

(2) Either party to this contract may initiate a request for publication of the final or interim reports or any portions thereof. Technical papers, articles, and submissions for review to technical journals, prepared for submission prior to approval of the final report required under the contract, must be submitted to the LADOTD/LTRC for approval prior to publication. In the event of failure of agreement between the LADOTD/LTRC and the Consultant relative to publication of the final report, or of any progress reports during the contractual period, either party reserves the right to publish independently in which event the non-concurrence of the other party shall be set forth as technical comments in the report in a clearly identified section such as "sponsor's comments," or "Consultant's comments." Following publication of the final report under a contract, no approvals are required from LADOTD/LTRC for subsequent publications, as noted below in item 4.

(3) Both parties to the agreement shall have equal responsibility to review and approve material for publication prior to publication of the final report, except that the LADOTD/LTRC reserves the right initially to publish the final report.

(4) After acceptance of the final report, the Consultant and the LADOTD/LTRC are free to use the data and results without restriction except as noted above in item 2. Whenever the Consultant uses the data and the results, due credit will be given to the LADOTD/LTRC and all other funding agencies.

(5) All reports published by the LADOTD/LTRC and/or the Consultant shall contain a disclaimer statement as provided in the *LTRC Manual of Research Procedures.*

(6) Publication by either party shall give credit to the other party and to all other funding agencies unless, due to failure of agreement on any report of the study, any funding agency or either of the parties to this agreement requests that its credit acknowledgement be omitted.

PATENT RIGHTS

The proprietary rights of any special equipment or procedures developed as a result of this project shall be governed by the following provisions.

The parties to this agreement hereby mutually agree that, if patentable discoveries or inventions should result from the Consultant's work described herein, all rights accruing from such discoveries or inventions shall be the sole property of the Consultant. However, the Consultant agrees to and does hereby grant to all State Highway and/or Transportation Departments and the United States Government

an irrevocable, non-exclusive, nontransferable and royalty-free license to practice each invention in the manufacture, use and disposition, according to law, of any article or material, and in the use of any method that may be developed as a part of the work under this agreement.

CONTRACT CHANGES

Minor revisions in the described work shall be made by the Consultant without additional compensation as the work progresses. Considerations for minor revisions have been included in the compensation computations. If the LADOTD/LTRC requires more substantial revisions or additional work which the consultant believes warrants additional compensation, the Consultant shall notify the LADOTD/LTRC in writing within thirty (30) days of being instructed to perform such work.

If the LADOTD/LTRC agree that the required work is necessary and warrants additional compensation, the Contract shall be changed by a **Supplemental Agreement** or by an **Extra Work Letter.** The Consultant shall not commence any additional work until written authority to proceed has been given by the LADOTD/LTRC. An Extra Work Letter shall be utilized in cases when the additional compensation is small and the work does not constitute a change in scope. The cumulative value of all extra Work Letters shall not exceed 10% of the cumulative value of all contract compensation exclusive of Extra Work Letters (original contract compensation plus all Supplemental Agreements). In all other cases wherein the LADOTD/LTRC agrees that the required work is necessary and warrants additional compensation, a Supplemental Agreement shall be utilized.
If the LADOTD/LTRC disagrees that additional compensation is due for the required work it shall be the Consultant's responsibility to perform the work and adhere to the procedures set forth in the Claims and Disputes provisions of this Contract.

OWNERSHIP OF DOCUMENTS

All data collected by the Consultant and all documents, notes, drawings, tracing and files collected or prepared in connection with this work, except the Consultant's personnel and administrative files, shall become and be the property of the LADOTD/LTRC and the LADOTD/LTRC shall not be restricted in any way whatever in its use of such material, except as specified in Louisiana R.S. 38:2317.

No public news releases, technical papers, or presentations concerning this project may be made without prior written approval of the LADOTD/LTRC.

TERMINATION OR SUSPENSION

This contract shall become effective from the date of execution and shall be binding upon the parties until the work has been completed by the Consultant in accordance with the terms of this Contract and accepted by the LADOTD/LTRC, and all payments and conditions have been met. Further, this Contract shall remain in effect until the LADOTD/LTRC has issued final acceptance of the services provided for herein. However, this Contract may be terminated earlier under any or all of the following conditions:

1. By mutual agreement and consent of the parties hereto.
2. By the LADOTD/LTRC as a consequence of the failure of the Consultant to comply with the terms, progress or quality of work in a satisfactory manner, proper allowance being

made for circumstances beyond the control of the Consultant. LADOTD/LTRC reserves the right to pursue any remedies available under the law to recover funds, including but not limited to recovery from the performance bond.

3. By either party upon failure of the other party to fulfill its obligations as set forth in this contract.
4. By the LADOTD/LTRC due to the departure for whatever reason of any principal member or members of the Consultant's firm.
5. By satisfactory completion of all services and obligations described herein.
6. By the LADOTD/LTRC giving thirty (30) days notice to the Consultant in writing and paying compensation due for completed work.

Upon termination, the Consultant shall deliver to the LADOTD/LTRC a report in complete detail of all findings and all obtained data for the LADOTD/LTRC's use as well as copies of all records of the work compiled to the date of termination and the LADOTD/LTRC shall pay in full for all work accomplished up to the date of termination.

If for any reason, the LADOTD/LTRC wishes to suspend this Contract, it may do so by giving the Consultant thirty (30) days written notice of intent to suspend. The Consultant shall, at expiration of the thirty (30) days from the date of the notice of intent to suspend, stop all work on the Project. Work shall resume no later than thirty (30) days after the LADOTD/LTRC provides the Consultant with a notice of intent to resume work.

The consultant shall not have the authority to suspend work on this Contract.

CLAIMS AND DISPUTES

The Consultant's failure to provide the required written notification pursuant to the provisions of the Contract Changes section of this contract shall be deemed a waiver of any and all claims for additional compensation.

When the Consultant has timely filed notice pursuant to the provisions of the Contract Changes section of this contract, the Consultant shall submit the entire claim and supporting documentation to the LTRC Director within thirty (30) days of the notice. The LTRC Director shall submit the claim to the LTRC Policy Committee (hereinafter, "the Committee") for review.

The Consultant shall be notified in writing of the Committee's recommendation, and, if accepted by the Consultant and approved by the Chief Engineer and FHWA, if applicable, the parties hereto shall execute a Supplemental Agreement based upon said recommendation. If the Committee's recommendation is not accepted by the Consultant, the Consultant may file a written appeal to the Chief Engineer. The decision of the Chief Engineer shall be final, and the Consultant shall be notified in writing of the Chief Engineer's decision, which is final and unappealable.

INSURANCE REQUIREMENTS

During the term of this Contract, the Consultant shall carry professional liability insurance in the

amount of $1,000,000. During the term of this Contract, the Consultant shall also carry commercial general liability insurance in the amount of $2,000,000. This insurance shall be written on a "claims-made" basis. The Consultant shall provide or cause to be provided a Certificate of Insurance to LADOTD/LTRC showing evidence of such professional liability insurance.

Consultant agrees to procure and maintain insurance on all Project property (including EVSE) against fire, destruction, storm, or other similar risks, in sufficient amounts to adequately protect the current value of the Project property. Consultant shall provide evidence of such insurance coverage to LADOTD/LTRC upon request. If the Project property is wholly or partially destroyed by fire or other casualty covered by insurance, Consultant agrees to cooperate by taking or causing to be taken all action necessary to enable recovery upon such insurance. The proceeds of any insurance will be applied to rebuild any Project property partially destroyed, or to replace any Project property wholly destroyed, if rebuilding or replacement is feasible.

INDEMNITY

Consultant agrees and obligates itself, its successors and assigns to protect, defend, indemnify, save and hold harmless LADOTD/LTRC, its officials, officers, agents, servants, employees, and volunteers from and against any and all claims, damages, expenses, and liability arising out of injury or death to any person or the damage, loss or destruction of any property resulting from any violation of State or Federal law, any negligent act or omission by Consultant, its representative, its agents, servants, and employees.

Further, Consultant agrees that it shall defend, hold harmless and indemnify LADOTD/LTRC, its officials, officers, agents, servants, employees, and volunteers, against any and all claims, demands, suits, actions (ex contractu, ex delictu, quasi-contractual, statutory or otherwise), judgments of sums of money, attorney's fees and court costs, to any party or third person including, but not limited to, amounts for loss of life or injury or damage to persons, property or damages to contractors, subcontractors, suppliers, laborers or other agents or contractors of the Consultant or any of the above, growing out of, resulting from, or by reason of, any negligent act or omission, operation or work of the Consultant, its employees, servants, contractors, or any person engaged in or in connection with this Contract. Consultant shall provide and bear the expense of all personal and professional insurance related to its duties arising under this Contract.

CLAIMS FOR LIENS

The Consultant shall hold the LADOTD/LTRC harmless from any and all claims for liens for labor, services or material furnished to the consultant in connection with the performance of its obligations under this Contract.

COMPLIANCE WITH LAWS

The Consultant shall comply with all applicable Federal, State and Local laws and ordinances, as shall all others employed by it in carrying out the provisions of this Contract.

COMPLIANCE WITH CIVIL RIGHTS ACT

The Consultant agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1972, and Consultant agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Consultant agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, national origin, veteran status, political affiliation or disabilities.

Any act of discrimination committed by Consultant, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

COVENANT AGAINST CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty the LADOTD/LTRC shall have the right to annul this contract without liability, or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

No legislator or person who has been certified by the Secretary of the State as elected to the legislature or member of any board or commission, members of their families or legal entities in which the legislator, person or board or commission member has an interest, may derive any benefit from this Contract or share in any part of the Contract in violation of Louisiana Code of Governmental Ethics (LSA-R.S. 42:1101, et seq.)

CODE OF GOVERNMENTAL ETHICS

The consultant acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to the consultant in the performance of services called for in this contract. The consultant agrees to immediately notify the state if potential violations of the Code of Governmental ethics arise at any time during the term of this contract.

SUBLETTING, ASSIGNMENT OR TRANSFER

This Contract, or any portion thereof, shall not be transferred, assigned, or sublet without the prior written consent of the LADOTD/LTRC, following thirty day written notice of the Consultant’s intent.

COST RECORDS

The Consultant and its subcontractors shall maintain all books, documents, papers, accounting records and other evidence pertaining to cost incurred relative to this project. Costs shall be in accordance with Title 2 Code of Federal Regulations Part 200 *et seq.* and LADOTD/LTRC's audit guidelines, which are incorporated herein by reference as if copied *in extenso*. Records shall be retained until such time as an audit is made by LADOTD/LTRC or the Consultant is released in writing by LADOTD/LTRC's Audit Director, at which time the Consultant may dispose of such records. The Consultant shall, however, retain such records for a minimum of three (3) years from the date of payment of the last invoice under this contract or the release of all retainage for this contract, whichever occurs later, for inspection by the LADOTD/LTRC and/or Legislative Auditor, and the FHWA or General Accounting Office (GAO) under State and Federal Regulations as of the date of this Contract.

SUCCESSORS AND ASSIGNS

This contract shall be binding upon the successors and assigns of the respective parties hereto.

TAX RESPONSIBILITY

The Consultant hereby agrees that the responsibility for payment of taxes related to this Contract and on the payments received under this contract shall be its obligation.

JOINT EFFORT

This Contract shall be deemed for all purposes prepared by the joint efforts of the parties hereto and shall not be construed against one party or the other as a result of the preparation, drafting, submittal or other event of negotiation, drafting, or execution of the Contract.

SEVERABILITY

If any term, covenant, condition, or provision of this Contract or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of this Contract or the application of such term, covenant, condition or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition, and provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

MISCELLANOUS

1) Disputes. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the parties hereto shall be referred to the LADOTD's Secretary for determination, whose decision in the matter shall be final and conclusive on the parties hereto.
2) Build American Buy America. Pursuant to the Build America Buy America ("BABA") provisions of the Infrastructure Investment and Jobs Act enacted on November 15, 2021 (Pub. L. No. 117-58), all iron and steel materials (including the application of a coating), manufactured

products manufactured in the United States and having the cost of the components greater than 55 percent of the total cost of all components of the manufactured product, as well as construction materials permanently installed in the project, shall be manufactured and produced in the United States, unless a waiver of these provisions is granted.

a. Consultant Certification. Consultant shall provide certification of intent to conform to BABA with their completed contract documents, through transmittal of a completed certification document. The certification document, "DOTD's Bidder's Build America, Buy America Certification Form," will be provided in the federal package with the other required federal documents, and shall be the only form acceptable for use in certification of intent to conform to BABA. The contractor shall provide a separate Certification Form from the supplier for each applicable material.
b. Waiver. Consultant will be allowed minimal use of foreign steel and iron materials without waiver provided the cost of these materials does not exceed 0.1 percent of the total contract cost or $2,500, whichever is greater. However, the contractor shall make written request to DOTDEVProgram@la.gov for permission to use such foreign materials and shall furnish a listing of the materials, their monetary value, and their origin and place of production.
c. Records Retention. The contractor shall retain any and all records pertaining to or relating with the contractor's BABA certification and processes for a period of not less than five years after final acceptance of the construction project.
d. Inspection. At LADOTD/LTRC's sole discretion, LADOTD/LTRC shall have the right to inspect or audit any and all records pertaining to or relating with the contractor's BABA certification and processes.

3) As provided at 23 U.S.C. 109(s)(2), projects to install EV chargers are treated as if the project is located on a Federal-aid highway. As a project located on a Federal-aid highway, 23 U.S.C. 113 applies and Davis Bacon Federal wage rate requirements included at subchapter IV of chapter 31 of Title 40, U.S.C., must be paid for any project funded with NEVI Formula Program funds.
4) Americans with Disabilities Act. The Americans with Disabilities Act of 1990 (ADA), and implementing regulations, apply to EV charging stations by prohibiting discrimination on the basis of disability by public and private entities. Consultant agrees to construct and/or install EV charging stations in compliance with the ADA and implementing regulations.
5) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act). Consultant shall comply with all applicable requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and implementing regulations.
6) Uniform Relocation Assistance and Real Property Acquisition Act (URA). If applicable, Consultant shall comply with the Uniform Relocation Assistance and Real Property Acquisition Act, and implementing regulations, which establish minimum standards for federally funded programs and projects that involve the acquisition of real property (real estate) or the displacement or relocation of persons from their homes, businesses, or farms.
7) National Environmental Policy Act of 1969. Consultant shall comply with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA implementing regulations, and agency NEPA procedures applicable to this program.
8) Energy Conservation. Consultant agrees to comply with the mandatory energy standards and policies of energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321, *et seq*.
9) Justice40 Initiative. Consultant agrees to comply with federal Justice40 goals by implementing

initiatives to ensure that at least forty percent of the funds received under the program benefit historically underserved communities. These communities include the Tribal Nation, Women, Black, Latino, Asian American Pacific, Indigenous, and other underrepresented groups. Justice40 goals related to the NEVI Formula Program may be achieved by site locations in disadvantaged communities; ownership by a member of a historically underserved group; workforce development; apprenticeships or on-the-job training in construction, operation, and maintenance; Louisiana-certified DBE participation; affordable charging rates; and other innovative means.

10) Civil Fraud. Consultant acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq*. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities pertaining to this Project. Upon execution of this Contract, Consultant certifies and affirms the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the federally funded assisted project for which work is being performed. In addition to other penalties that may be applicable, Consultant further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Consultant to the extent the Federal Government deems appropriate.
11) Criminal Fraud. Consultant acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001. If Consultant provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal program under 49 U.S.C. 53 or any other applicable federal law, 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 or other applicable federal law to the extent the Federal Government deems appropriate.
12) Controlling Law. The validity, interpretation, and performance of this Contract shall be controlled and constructed in accordance with the laws of the State of Louisiana. In the event of default by either Party, the aggrieved Party shall have all rights granted by the general laws of the State of Louisiana.
13) Legal Compliance. The Parties shall comply with all applicable federal, state, and local laws and regulations, including, specifically, the Louisiana Code of Government Ethics (LSA-R.S. 42:1101, *et seq*.) in carrying out the provisions of this Contract.
14) Venue. The exclusive venue for any suit arising out of this Contract shall be in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana.
15) Third Parties. The parties to this Contract understand that this Contract does not create or intend to confer any rights in or on persons or entities not a party to this Contract.
16) Ownership. Nothing in this Contract shall construe to create or vest in LADOTD/LTRC any ownership interest in, or responsibility for, any electric vehicle charging station(s) to be improved or built under this Contract.
17) Provision of Law Deemed Inserted. Each provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein. The Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Contract shall forthwith be amended to make such insertion or correction.
18) Applicability to Subcontracts. The Consultant agrees that all contracts it enters into pursuant to this Contract shall comply with the forgoing terms and conditions hereto.

19) Public Records. Consultant acknowledges familiarity with Louisiana's Public Records Law (La. R.S. 44, et seq.) applicable to public information and the requirements of the RFP. LADOTD/LTRC will not advise Consultant as to the nature or content of the documents or other records entitled to protection from disclosure under Louisiana's Public Records Law, as to the interpretation of such laws, or as to the definition of "trade secret."
20) Consultant must acquire adequate property interests to construct, operate, and maintain the NEVI-funded EV charging stations.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

WITNESSES:

NAME OF CONSULTANT

_____
Witness for First Party

BY: _____
Authorized Person
Title

Date: _____

_____
Witness for First Party

Federal Identification Number: ########

STATE OF LOUISIANA
DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

_____
Witness for Second Party

BY:_____
Secretary

_____
Witness for Second Party

Date: _____

RECOMMENDED FOR APPROVAL:

BY: _____
Division Head

Attachment A – Order of Precedence

1. In the event of any conflict, ambiguity, or inconsistency between or among the contract and any attachments or exhibits thereto (collectively referred to as the "Contract Documents"), the order of precedence, from highest to lowest, is as follows:

    a. The NEVI Final Rule (Title 23, C.F.R. Chapter I, subchapter G, part 680, *et seq.*), including all other applicable Federal laws;
    b. The provision of the main body of this Contract, as may be amended from time to time;
    c. The advertisement of the RFP including all attachments, appendices, exhibits, plans, drawings, and any other items attached to or made a part of it; and
    d. Consultant's proposal including all attachments, appendices, exhibits, plans, drawings, and any other items attached to or made a part of it.

2. If there is a conflict, ambiguity, or inconsistency between any of the provisions of the Contract Documents having the same order of precedence, the provisions establishing a higher standard of safety, reliability, quality level of service, quantity, or scope will prevail.

3. Consultant acknowledges and agrees that it had the opportunity and obligation, before submission of its proposal, to review the terms and conditions of this Contract and to bring to the attention of LADOTD/LTRC any conflicts, ambiguities, or inconsistencies of which it is aware contained within this Contract.

4. LADOTD/LTRC's interim or final answers to the questions posed during the RFP process for this Contract do not form part of this Contract and are not relevant in interpreting this Contract, except to the extent LADOTD/LTRC, in its discretion, believes this Contract is ambiguous, in which case interim or final answers may be used to clarify such ambiguous provisions.

5. Incorporation into this Contract of any part of the Consultant's proposal shall not (a) limit, modify, or alter LADOTD/LTRC's right to review and approve any submittal required hereunder, or (b) be deemed as acceptance or approval of any part of the Consultant's proposal by LADOTD/LTRC.

6. Consultant shall not take advantage of or benefit from any apparent or actual error, conflict, ambiguity or inconsistency in this Contract. If Consultant becomes aware that any matters with respect to the project are not sufficiently detailed, described, or explained in this Contract, or if Consultant becomes aware of any error or any conflict, ambiguity or inconsistency between or among the documents forming this Contract, Consultant shall promptly provide Notice to LADOTD/LTRC, including the item Consultant considers should apply based on the applicable rules in this **Attachment A - Order of Precedence**. Except as expressly stated in this Contract, if (a) the error, conflict, ambiguity or inconsistency cannot be reconciled by applying the applicable rules or (b) the Parties disagree about (i) which rule applies or (ii) the results of the application of such applicable rule(s), then LADOTD/LTRC will determine, in its reasonable discretion, which of the conflicting items is to apply and provide notice to the Consultant before the Consultant proceeds with the applicable aspect of the project.

Attachment B – Cybersecurity Requirements for Internet Service and EV Charging Providers

Purpose and Scope

This section is designed to provide clear and comprehensive cybersecurity guidance to all Broadband and Internet Service Providers (ISPs), EV Charging Providers (EVCPs) or other public services, which receive funding from the state, which offer internet connections to Louisiana constituents, visitors, residents, or businesses. Given the critical role that these providers play in ensuring consistent and secure connectivity for the State, it is imperative that they create and implement a robust cybersecurity plan to detect, manage, and report cyber threats promptly.

Responsibilities

Monitoring for Cyber Threats

Device Configuration: Devices that are a part of or connected to the network should be meticulously configured to generate logs at an appropriate level, ensuring that any irregularities or potential threats are properly recorded.

Event Management: All events, especially those that might indicate potential cyber threats, should be managed, correlated, monitored, and retained as per state standards and regulations. This ensures that ISPs and EVCPs have a comprehensive understanding of their network's security posture at all times.

Continuous Monitoring: All internet connections, regardless of their nature, should be monitored continuously for both known and unknown cyber threats.

Threat Reporting

Immediate Notification: ISPs and EVCPs are expected to report all identified threats to the state in near real- time. This should be facilitated through threat sharing technology platforms, which ensure that threat intelligence is disseminated promptly and effectively.

Mandatory Reporting (during Period of Performance): Any attempted or successful cyber-attacks on the network or infrastructure of an ISP must be promptly reported to the State of Louisiana Fusion Center. This requirement is non-negotiable and is critical for the state to assess the larger cyber threat landscape.

Cyber Incident Response Plan

Development and Maintenance: All service providers are required to develop a comprehensive Cyber Incident Response Plan (CIRP) detailing their approach to managing and mitigating cyber incidents. This plan should cover everything from threat detection to post-incident analysis.

State Collaboration: ISPs and EVCPs are required to share their CIRP with the State's Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) office. This ensures that in the event of a statewide cyber incident, there is a coordinated response and that the ISP's measures align with the state's cybersecurity protocols.

Patch Management

Importance of Timely Patching: Ensuring that all systems, applications, and devices are up-to-date with the latest security patches is a critical aspect of maintaining a robust cybersecurity posture. Vulnerabilities that are left unpatched can serve as entry points for cyber attackers.

Routine Patching Schedule: Service providers should implement a routine patching schedule. Critical security patches should be applied as soon as possible, while non-critical patches should be implemented based on a predefined schedule that minimizes disruptions but ensures timely updates.

Patch Assessment: Before applying patches, ISPs and EVCPs should assess them in a controlled environment to verify their compatibility and to ensure that they do not introduce additional vulnerabilities or issues.

Patch Reporting (during Period of Performance): ISPs and EVCPs should maintain a record of all applied patches, detailing the date of implementation, the nature of the patch, and any observed impact on systems or services. This record should be made available to the State upon request.

Patch Notification: In instances where a patch addresses a critical vulnerability or has a significant impact on services or user security, ISPs and EVCPs should notify their customers and provide guidance on any required actions.

Audits and Compliance: The state may conduct periodic audits to ensure ISPs and EVCPs are adhering to best practices in patch management. Non-compliance with patch management guidelines can lead to further actions as deemed appropriate by the state.

Timely and efficient patch management not only safeguards the service providers' infrastructure but also plays a pivotal role in ensuring the overall security of the Site's digital ecosystem. ISPs and EVCPs are encouraged to prioritize this process and leverage it as a core component of their cybersecurity strategy.

Supply Chain Risk Management

ISPs and EVCPs must understand the requirements contained within this policy section shall be shared with and are applicable to all critical third-party entities providing supporting service to the ISP or EVCP.

Compliance and Review

The appropriate state authority will conduct regular reviews of the ISP's cybersecurity measures to ensure adherence to this policy.

Third-party Cyber Risk Assessment: Every 3 years, ISPs and EVCPs are mandated to undergo a cyber-risk assessment conducted by an independent third party. This assessment will evaluate the effectiveness and resilience of the ISP's cybersecurity measures, ensuring that they are in line with best practices and state requirements. Risk Assessment scope shall also include a review of ISP critical vendors, partners, and shared services.

Non-compliance with any of the stipulated guidelines may result in penalties or further action as deemed necessary by the state.

Title 23 —Highways
Chapter I —Federal Highway Administration, Department of Transportation
Subchapter G —Engineering and Traffic Operations

PART 680—NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE STANDARDS AND REQUIREMENTS

Authority: 23 U.S.C. 109, 23 U.S.C. 315; Pub. L. 117-58, title VIII of division J.

Source: 88 FR 12752, Feb. 28, 2023, unless otherwise noted.

§ 680.100 Purpose.

The purpose of this part is to prescribe minimum standards and requirements for projects funded under the National Electric Vehicle Infrastructure (NEVI) Formula Program and projects for the construction of publicly accessible electric vehicle (EV) chargers that are funded with funds made available under Title 23, United States Code, including any EV charging infrastructure project funded with Federal funds that is treated as a project on a Federal-aid highway.

§ 680.102 Applicability.

Except where noted, these regulations apply to all NEVI Formula Program projects as well as projects for the construction of publicly accessible EV chargers that are funded with funds made available under Title 23, United States Code, including any EV charging infrastructure project funded with Federal funds that is treated as a project on a Federal-aid highway.

§ 680.104 Definitions.

AC Level 2 means a charger that operates on a circuit from 208 volts to 240 volts and transfers alternating-current (AC) electricity to a device in an EV that converts alternating current to direct current to recharge an EV battery.

Alternative Fuel Corridor (AFC) means national EV charging and hydrogen, propane, and natural gas fueling corridors designated by FHWA pursuant to 23 U.S.C. 151.

CHAdeMO means a type of protocol for a charging connector interface between an EV and a charger (see *www.chademo.com*). It specifies the physical, electrical, and communication requirements of the connector and mating vehicle inlet for direct-current (DC) fast charging. It is an abbreviation of "charge de move", equivalent to "charge for moving."

Charger means a device with one or more charging ports and connectors for charging EVs. Also referred to as Electric Vehicle Supply Equipment (EVSE).

Charging network means a collection of chargers located on one or more property(ies) that are connected via digital communications to manage the facilitation of payment, the facilitation of electrical charging, and any related data requests.

Charging network provider means the entity that operates the digital communication network that remotely manages the chargers. Charging network providers may also serve as charging station operators and/or manufacture chargers.

Charging port means the system within a charger that charges one EV. A charging port may have multiple connectors, but it can provide power to charge only one EV through one connector at a time.

Charging station means the area in the immediate vicinity of a group of chargers and includes the chargers, supporting equipment, parking areas adjacent to the chargers, and lanes for vehicle ingress and egress. A charging station could comprise only part of the property on which it is located.

Charging station operator means the entity that owns the chargers and supporting equipment and facilities at one or more charging stations. Although this entity may delegate responsibility for certain aspects of charging station operation and maintenance to subcontractors, this entity retains responsibility for operation and maintenance of chargers and supporting equipment and facilities. In some cases, the charging station operator and the charging network provider are the same entity.

Combined Charging System (CCS) means a standard connector interface that allows direct current fast chargers to connect to, communicate with, and charge EVs.

Community means either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as individuals with disabilities, migrant workers, or Native Americans), where either type of group experiences common conditions.

Connector means the device that attaches an EV to a charging port in order to transfer electricity.

Contactless payment methods means a secure method for consumers to purchase services using a debit card, credit card, smartcard, mobile application, or another payment device by using radio frequency identification (RFID) technology and near-field communication (NFC).

Cryptographic agility means the capacity to rapidly update or switch between data encryption systems, algorithms, and processes without the need to redesign the protocol, software, system, or standard.

Direct Current Fast Charger (DCFC) means a charger that enables rapid charging by delivering direct-current (DC) electricity directly to an EV's battery.

Disadvantaged communities (DACs) mean census tracts or communities with common conditions identified by the U.S. Department of Transportation and the U.S. Department of Energy that consider appropriate data, indices, and screening tools to determine whether a specific community is disadvantaged based on a combination of variables that may include, but are not limited to, the following: low income, high and/or persistent poverty; high unemployment and underemployment; racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities; linguistic isolation; high housing cost burden and substandard housing; distressed neighborhoods; high transportation cost burden and/or low transportation access; disproportionate environmental stressor burden and high cumulative impacts; limited water and sanitation access and affordability; disproportionate impacts from climate change; high energy cost burden and low energy access; jobs lost through the energy transition; and limited access to healthcare.

Distributed energy resource means small, modular, energy generation and storage technologies that provide electric capacity or energy where it is needed.

Electric Vehicle (EV) means a motor vehicle that is either partially or fully powered on electric power received from an external power source. For the purposes of this regulation, this definition does not include golf carts, electric bicycles, or other micromobility devices.

Electric Vehicle Infrastructure Training Program (EVITP) refers to a comprehensive training program for the installation of electric vehicle supply equipment. For more information, refer to *https://evitp.org/*.

Electric Vehicle Supply Equipment (EVSE) See definition of a charger.

Open Charge Point Interface (OCPI) means an open-source communication protocol that governs the communication among multiple charging networks, other communication networks, and software applications to provide information and services for EV drivers.

Open Charge Point Protocol (OCPP) means an open-source communication protocol that governs the communication between chargers and the charging networks that remotely manage the chargers.

Plug and Charge means a method of initiating charging, whereby an EV charging customer plugs a connector into their vehicle and their identity is authenticated through digital certificates defined by ISO-15118, a charging session initiates, and a payment is transacted automatically, without any other customer actions required at the point of use.

Power Sharing means dynamically limiting the charging power output of individual charging ports at the same charging station to ensure that the sum total power output to all EVs concurrently charging remains below a maximum power threshold. This is also called automated load management.

Private entity means a corporation, partnership, company, other nongovernmental entity, or nonprofit organization.

Public Key Infrastructure (PKI) means a system of processes, technologies, and policies to encrypt and digitally sign data. It involves the creation, management, and exchange of digital certificates that authenticate the identity of users, devices, or services to ensure trust and secure communication.

Secure payment method means a type of payment processing that ensures a user's financial and personal information is protected from fraud and unauthorized access.

Smart charge management means controlling the amount of power dispensed by chargers to EVs to meet customers' charging needs while also responding to external power demand or pricing signals to provide load management, resilience, or other benefits to the electric grid.

State EV infrastructure deployment plan means the plan submitted to the FHWA by the State describing how it intends to use its apportioned NEVI Formula Program funds.

§ 680.106 Installation, operation, and maintenance by qualified technicians of electric vehicle charging infrastructure.

(a) ***Procurement process transparency for the operation of EV charging stations.*** States or other direct recipients shall ensure public transparency for how the price will be determined and set for EV charging and make available for public review the following:

(1) Summary of the procurement process used;

(2) Number of bids received;

(3) Identification of the awardee;

(4) Proposed contract to be executed with the awardee;

(5) Financial summary of contract payments suitable for public disclosure including price and cost data, in accordance with State law; and

(6) Any information describing how prices for EV charging are to be set under the proposed contract, in accordance with State law.

(b) ***Number of charging ports.***

(1) When including DCFCs located along and designed to serve users of designated AFCs, charging stations must have at least four network-connected DCFC charging ports and be capable of simultaneously charging at least four EVs.

(2) In other locations, EV charging stations must have at least four network-connected (either DCFC or AC Level 2 or a combination of DCFC and AC Level 2) charging ports and be capable of simultaneously charging at least four EVs.

(c) ***Connector type.*** All charging connectors must meet applicable industry standards. Each DCFC charging port must be capable of charging any CCS-compliant vehicle and each DCFC charging port must have at least one permanently attached CCS Type 1 connector. In addition, permanently attached CHAdeMO (*www.chademo.com*) connectors can be provided using only FY2022 NEVI Funds. Each AC Level 2 charging port must have a permanently attached J1772 connector and must charge any J1772-compliant vehicle.

(d) ***Power level.***

(1) DCFC charging ports must support output voltages between 250 volts DC and 920 volts DC. DCFCs located along and designed to serve users of designated AFCs must have a continuous power delivery rating of at least 150 kilowatt (kW) and supply power according to an EV's power delivery request up to 150 kW, simultaneously from each charging port at a charging station. These corridor-serving DCFC charging stations may conduct power sharing so long as each charging port continues to meet an EV's request for power up to 150 kW.

(2) Each AC Level 2 charging port must have a continuous power delivery rating of at least 6 kW and the charging station must be capable of providing at least 6 kW per port simultaneously across all AC ports. AC Level 2 chargers may conduct power sharing and/or participate in smart charge management programs so long as each charging port continues to meet an EV's demand for power up to 6 kW, unless the EV charging customer consents to accepting a lower power level.

(e) ***Availability.*** Charging stations located along and designed to serve users of designated Alternative Fuel Corridors must be available for use and sited at locations physically accessible to the public 24 hours per day, 7 days per week, year-round. Charging stations not located along or not designed to serve users of designated Alternative Fuel Corridors must be available for use and accessible to the public at least as frequently as the business operating hours of the site host. This section does not prohibit isolated or temporary interruptions in service or access because of maintenance or repairs or due to the exclusions outlined in § 680.116(b)(3).

(f) ***Payment methods.*** Unless charging is permanently provided free of charge to customers, charging stations must:

(1) Provide for secure payment methods, accessible to persons with disabilities, which at a minimum shall include a contactless payment method that accepts major debit and credit cards, and either an automated toll-free phone number or a short message/messaging system (SMS) that provides the EV charging customer with the option to initiate a charging session and submit payment;

(2) Not require a membership for use;

(3) Not delay, limit, or curtail power flow to vehicles on the basis of payment method or membership; and

(4) Provide access for users that are limited English proficient and accessibility for people with disabilities. Automated toll-free phone numbers and SMS payment options must clearly identify payment access for these populations.

(g) ***Equipment certification.*** States or other direct recipients must ensure that all chargers are certified by an Occupational Safety and Health Administration Nationally Recognized Testing Laboratory and that all AC Level 2 chargers are ENERGY STAR certified. DCFC and AC Level 2 chargers should be certified to the appropriate Underwriters Laboratories (UL) standards for EV charging system equipment.

(h) ***Security.*** States or other direct recipients must implement physical and cybersecurity strategies consistent with their respective State EV Infrastructure Deployment Plans to ensure charging station operations protect consumer data and protect against the risk of harm to, or disruption of, charging infrastructure and the grid.

(1) Physical security strategies may include topics such as lighting; siting and station design to ensure visibility from onlookers; driver and vehicle safety; video surveillance; emergency call boxes; fire prevention; charger locks; and strategies to prevent tampering and illegal surveillance of payment devices.

(2) Cybersecurity strategies may include the following topics: user identity and access management; cryptographic agility and support of multiple PKIs; monitoring and detection; incident prevention and handling; configuration, vulnerability, and software update management; third-party cybersecurity testing and certification; and continuity of operation when communication between the charger and charging network is disrupted.

(i) ***Long-term stewardship.*** States or other direct recipients must ensure that chargers are maintained in compliance with this part for a period of not less than 5 years from the initial date of operation.

(j) ***Qualified technician.*** States or other direct recipients shall ensure that the workforce installing, maintaining, and operating chargers has appropriate licenses, certifications, and training to ensure that the installation and maintenance of chargers is performed safely by a qualified and increasingly diverse workforce of licensed technicians and other laborers. Further:

(1) Except as provided in paragraph (j)(2) of this section, all electricians installing, operating, or maintaining EVSE must meet one of the following requirements:

(i) Certification from the EVITP.

(ii) Graduation or a continuing education certificate from a registered apprenticeship program for electricians that includes charger-specific training and is developed as a part of a national guideline standard approved by the Department of Labor in consultation with the Department of Transportation.

(2) For projects requiring more than one electrician, at least one electrician must meet the requirements above, and at least one electrician must be enrolled in an electrical registered apprenticeship program.

(3) All other onsite, non-electrical workers directly involved in the installation, operation, and maintenance of chargers must have graduated from a registered apprenticeship program or have appropriate licenses, certifications, and training as required by the State.

(k) ***Customer service.*** States or other direct recipients must ensure that EV charging customers have mechanisms to report outages, malfunctions, and other issues with charging infrastructure. Charging station operators must enable access to accessible platforms that provide multilingual services. States or other direct recipients must comply with the American with Disabilities Act of 1990 requirements and multilingual access when creating reporting mechanisms.

(l) ***Customer data privacy.*** Charging station operators must collect, process, and retain only that personal information strictly necessary to provide the charging service to a consumer, including information to complete the charging transaction and to provide the location of charging stations to the consumer. Chargers and charging networks should be compliant with appropriate Payment Card Industry Data Security Standards (PCI DSS) for the processing, transmission, and storage of cardholder data. Charging Station Operators must also take reasonable measures to safeguard consumer data.

(m) ***Use of program income.***

(1) Any net income from revenue from the sale, use, lease, or lease renewal of real property acquired shall be used for Title 23, United States Code, eligible projects.

(2) For purposes of program income or revenue earned from the operation of an EV charging station, the State or other direct recipient should ensure that all revenues received from operation of the EV charging facility are used only for:

(i) Debt service with respect to the EV charging station project, including funding of reasonable reserves and debt service on refinancing;

(ii) A reasonable return on investment of any private person financing the EV charging station project, as determined by the State or other direct recipient;

(iii) Any costs necessary for the improvement and proper operation and maintenance of the EV charging station, including reconstruction, resurfacing, restoration, and rehabilitation;

(iv) If the EV charging station is subject to a public-private partnership agreement, payments that the party holding the right to the revenues owes to the other party under the public-private partnership agreement; and

(v) Any other purpose for which Federal funds may be obligated under Title 23, United States Code.

§ 680.108 Interoperability of electric vehicle charging infrastructure.

(a) ***Charger-to-EV communication.*** Chargers must conform to ISO 15118-3 and must have hardware capable of implementing both ISO 15118-2 and ISO 15118-20. By February 28, 2024, charger software must conform to ISO 15118-2 and be capable of Plug and Charge. Conformance testing for charger software and hardware should follow ISO 15118-4 and ISO 15118-5, respectively.

(b) ***Charger-to-Charger-Network Communication.*** Chargers must conform to Open Charge Point Protocol (OCPP) 1.6J or higher. By February 28, 2024, chargers must conform to OCPP 2.0.1.

(c) ***Charging-Network-to-Charging-Network Communication.*** By February 28, 2024, charging networks must be capable of communicating with other charging networks in accordance with Open Charge Point Interface (OCPI) 2.2.1.

(d) ***Network switching capability.*** Chargers must be designed to securely switch charging network providers without any changes to hardware.

§ 680.110 Traffic control devices or on-premises signs acquired, installed, or operated.

(a) ***Manual on Uniform Traffic Control Devices for Streets and Highways.*** All traffic control devices must comply with part 655 of this subchapter.

(b) ***On-premises signs.*** On-property or on-premise advertising signs must comply with part 750 of this chapter.

§ 680.112 Data submittal.

(a) ***Quarterly data submittal.*** States and other direct recipients must ensure the following data are submitted on a quarterly basis in a manner prescribed by the FHWA. Any quarterly data made public will be aggregated and anonymized to protect confidential business information.

(1) Charging station identifier that the following data can be associated with. This must be the same charging station name or identifier used to identify the charging station in data made available to third-parties in § 680.116(c)(1);

(2) Charging port identifier. This must be the same charging port identifier used to identify the charging port in data made available to third-parties in § 680.116(c)(8)(ii);

(3) Charging session start time, end time, and any error codes associated with an unsuccessful charging session by port;

(4) Energy (kWh) dispensed to EVs per charging session by port;

(5) Peak session power (kW) by port;

(6) Payment method associated with each charging session;

(7) Charging station port uptime, T_outage, and T_excluded calculated in accordance with the equation in § 680.116(b) for each of the previous 3 months;

(8) Duration (minutes) of each outage.

(b) ***Annual data submittal.*** Beginning in 2024, States and other direct recipients must ensure the following data are submitted on an annual basis, on or before March 1, in a manner prescribed by FHWA. Any annual data made public will be aggregated and anonymized to protect confidential business information.

(1) Maintenance and repair cost per charging station for the previous year.

(2) For private entities identified in paragraph (c)(1) of this section, identification of and participation in any State or local business opportunity certification programs including but not limited to minority-owned businesses, Veteran-owned businesses, woman-owned businesses, and businesses owned by economically disadvantaged individuals.

(c) ***One-time data submittal.*** This paragraph (c) applies only to both the NEVI Formula Program projects and grants awarded under 23 U.S.C. 151(f) for projects that are for EV charging stations located along and designed to serve the users of designated AFCs. Beginning in 2024, States and other direct recipients must ensure the following data are collected and submitted once for each charging station, on or before March 1 of each year, in a manner prescribed by the FHWA. Any one-time data made public will be aggregated and anonymized to protect confidential business information.

(1) The name and address of the private entity(ies) involved in the operation and maintenance of chargers.

(2) Distributed energy resource installed capacity, in kW or kWh as appropriate, of asset by type (e.g., stationary battery, solar, etc.) per charging station; and

(3) Charging station real property acquisition cost, charging equipment acquisition and installation cost, and distributed energy resource acquisition and installation cost; and

(4) Aggregate grid connection and upgrade costs paid to the electric utility as part of the project, separated into:

(i) Total distribution and system costs, such as extensions to overhead/underground lines, and upgrades from single-phase to three-phase lines; and

(ii) Total service costs, such as the cost of including poles, transformers, meters, and on-service connection equipment.

(d) ***Community engagement outcomes report.*** This paragraph (d) only applies to the NEVI Formula Program projects. States must include in the State EV Infrastructure Deployment Plan a description of the community engagement activities conducted as part of the development and approval of their most recently-submitted State EV Infrastructure Deployment Plan, including engagement with DACs.

§ 680.114 Charging network connectivity of electric vehicle charging infrastructure.

(a) ***Charger-to-charger-network communication.***

(1) Chargers must communicate with a charging network via a secure communication method. See § 680.108 for more information about OCPP requirements.

(2) Chargers must have the ability to receive and implement secure, remote software updates and conduct real-time protocol translation, encryption and decryption, authentication, and authorization in their communication with charging networks.

(3) Charging networks must perform and chargers must support remote charger monitoring, diagnostics, control, and smart charge management.

(4) Chargers and charging networks must securely measure, communicate, store, and report energy and power dispensed, real-time charging-port status, real-time price to the customer, and historical charging-port uptime.

(b) ***Interoperability.*** See § 680.108 for interoperability requirements.

(c) ***Charging-network-to-charging-network communication.*** A charging network must be capable of communicating with other charging networks to enable an EV driver to use a single method of identification to charge at Charging Stations that are a part of multiple charging networks. See § 680.108 for more information about OCPI requirements.

(d) ***Charging-network-to-grid communication.*** Charging networks must be capable of secure communication with electric utilities, other energy providers, or local energy management systems.

(e) ***Disrupted network connectivity.*** Chargers must remain functional if communication with the charging network is temporarily disrupted, such that they initiate and complete charging sessions, providing the minimum required power level defined in § 680.106(d).

§ 680.116 Information on publicly available electric vehicle charging infrastructure locations, pricing, real time availability, and accessibility through mapping.

(a) ***Communication of price.***

(1) The price for charging must be displayed prior to initiating a charging transaction and be based on the price for electricity to charge in $/kWh. If the price for charging is not currently based on the price for electricity to charge an Electric Vehicle in $/kWh, the requirements of this subparagraph must be satisfied within one year from February 28, 2023.

(2) The price for charging displayed and communicated via the charging network must be the real-time price (*i.e.,* price at that moment in time). The price at the start of the session cannot change during the session.

(3) Price structure including any other fees in addition to the price for electricity to charge must be clearly displayed and explained.

(b) ***Minimum uptime.*** States or other direct recipients must ensure that each charging port has an average annual uptime of greater than 97%.

(1) A charging port is considered “up” when its hardware and software are both online and available for use, or in use, and the charging port successfully dispenses electricity in accordance with requirements for minimum power level (see § 680.106(d)).

(2) Charging port uptime must be calculated on a monthly basis for the previous twelve months.

(3) Charging port uptime percentage must be calculated using the following equation:

$$\mu = ((525{,}600 - (T_{outage} - T_{excluded}))/525{,}600) \times 100$$

where:

μ = port uptime percentage,

T_outage = total minutes of outage in previous year, and

T_excluded = total minutes of outage in previous year caused by the following reasons outside the charging station operator's control, provided that the charging station operator can demonstrate that the charging port would otherwise be operational: electric utility service interruptions, failure to charge or meet the EV charging customer's expectation for power delivery due to the fault of the vehicle, scheduled maintenance, vandalism, or natural disasters. Also excluded are hours outside of the identified hours of operation of the charging station.

(c) ***Third-party data sharing.*** States or other direct recipients must ensure that the following data fields are made available, free of charge, to third-party software developers, via application programming interface:

(1) Unique charging station name or identifier;

(2) Address (street address, city, State, and zip code) of the property where the charging station is located;

(3) Geographic coordinates in decimal degrees of exact charging station location;

(4) Charging station operator name;

(5) Charging network provider name;

(6) Charging station status (operational, under construction, planned, or decommissioned);

(7) Charging station access information:

(i) Charging station access type (public or limited to commercial vehicles);

(ii) Charging station access days/times (hours of operation for the charging station);

(8) Charging port information:

(i) Number of charging ports;

(ii) Unique port identifier;

(iii) Connector types available by port;

(iv) Charging level by port (DCFC, AC Level 2, etc.);

(v) Power delivery rating in kilowatts by port;

(vi) Accessibility by vehicle with trailer (pull-through stall) by port (yes/no);

(vii) Real-time status by port in terms defined by Open Charge Point Interface 2.2.1;

(9) Pricing and payment information:

(i) Pricing structure;

(ii) Real-time price to charge at each charging port, in terms defined by Open Charge Point Interface 2.2.1; and

(iii) Payment methods accepted at charging station.

§ 680.118 Other Federal requirements.

All applicable Federal statutory and regulatory requirements apply to the EV charger projects. These requirements include, but are not limited to:

(a) All statutory and regulatory requirements that are applicable to funds apportioned under chapter 1 of Title 23, United States Code, and the requirements of 2 CFR part 200 apply. This includes the applicable requirements of 23, United States Code, and Title 23, Code of Federal Regulations, such as the applicable Buy America requirements at 23 U.S.C. 313 and Build America, Buy America Act (Pub. L. No 117-58, div. G sections 70901-70927).

(b) As provided at 23 U.S.C. 109(s)(2), projects to install EV chargers are treated as if the project is located on a Federal-aid highway. As a project located on a Federal-aid highway, 23 U.S.C. 113 applies and Davis Bacon Federal wage rate requirements included at subchapter IV of chapter 31 of Title 40, U.S.C., must be paid for any project funded with NEVI Formula Program funds.

(c) The American with Disabilities Act of 1990 (ADA), and implementing regulations, apply to EV charging stations by prohibiting discrimination on the basis of disability by public and private entities. EV charging stations must comply with applicable accessibility standards adopted by the Department of Transportation into its ADA regulations (49 CFR part 37) in 2006, and adopted by the Department of Justice into its ADA regulations (28 CFR parts 35 and 36) in 2010.

(d) Title VI of the Civil Rights Act of 1964, and implementing regulations, apply to this program to ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(e) All applicable requirements of Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), and implementing regulations, apply to this program.

(f) The Disadvantaged Business Enterprise (DBE) program does not apply to the NEVI Formula Funds; however, the DBE program may apply to other programs apportioned under chapter 1 of Title 23, United States Code.

(g) The Uniform Relocation Assistance and Real Property Acquisition Act, and implementing regulations, apply to this program by establishing minimum standards for federally funded programs and projects that involve the acquisition of real property (real estate) or the displacement or relocation of persons from their homes, businesses, or farms.

(h) The National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA implementing regulations, and applicable agency NEPA procedures apply to this program by establishing procedural requirements to ensure that Federal agencies consider the consequences of their proposed actions on the human environment and inform the public about their decision making for major Federal actions significantly affecting the quality of the human environment.

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (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). 23 CFR 633.102(e).

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. 23 CFR 633.102(e).

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) in accordance with 23 CFR 633.102. 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 solicitation-for-bids or request-for-proposals 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). 23 CFR 633.102(b).

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. 23 CFR 633.102(d).

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. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A 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 Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), 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 Part 230, Subpart A, 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 (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 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 Part 35 and 29 CFR Part 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. 23 CFR 230.409 (g)(4) & (5).

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, sexual orientation, gender identity, 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 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 or other knowledgeable company official.

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

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

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

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

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

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

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

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

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

a. The contractor will conduct periodic inspections of project sites to ensure 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. 23 CFR 230.409. 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, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 thereunder. 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, sexual orientation, gender identity, 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, 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. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient 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 recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

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 more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, 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, sexual orientation, gender identity, 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), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

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 (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. 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 must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must 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. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

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

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate 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 used 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) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) 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 will be sent by the contracting officer by email to *DBAconformance@dol.gov*. 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.

(4) 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 will, by email to *DBAconformance@dol.gov*, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The 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.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must 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.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at *https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347/.pdf* or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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 29 CFR part 3; and

(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(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

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

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. 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. 23 CFR 230.111(e)(2). 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 journeyworkers 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 as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 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 as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, 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 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 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

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

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), 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 watchpersons 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. 29 CFR 5.5.

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 and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* 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.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, 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 that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

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” in paragraph 1 of Section VI 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: (based on longstanding interpretation)

(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. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), 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. Pursuant to 23 CFR 635.116(c), 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. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

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 Part 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. 23 CFR 635.108.

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 Part 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). 29 CFR 1926.10.

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 Part 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 11, 1916, (39 Stat. 355), as amended and supplemented;

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

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

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. 2 CFR 180.220 and 1200.220.

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. 2 CFR 180.320.

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. 2 CFR 180.325.

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. 2 CFR 180.345 and 180.350.

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, Subpart I, 180.900-180.1020, and 1200. “First Tier Covered Transactions” refers to any covered transaction between a recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 180.330.

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. 2 CFR 180.220 and 180.300.

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. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. 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 System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

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 CFR 180.325.

* * * * *

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 CFR 180.335;.

(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, 2 CFR 180.800;

(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, 2 CFR 180.700 and 180.800; 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. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. **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). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant 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. 2 CFR 180.365.

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, Subpart I, 180.900 – 180.1020, 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 recipient or subrecipient 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 recipient or subrecipient 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. 2 CFR 1200.220 and 1200.332.

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. 2 CFR 180.220 and 1200.220.

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 System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

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. 2 CFR 180.325.

* * * * *

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

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should 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 Part 20, App. A.

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.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To 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 (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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