

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: May 18, 2010

☒ **Consent** ☐ **Regular**
☐ **Workshop** ☐ **Public Hearing**

Department:

Submitted By: Engineering & Public Works

Submitted For: Traffic Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: a Resolution to approve a Joint Participation Agreement (JPA) for the enhancement and operation of the traffic signal system with the Florida Department of Transportation (FDOT).

SUMMARY: Adoption of this Resolution and approval of this JPA will provide for continued funding for seven staff positions through the FY 2014/2015. FDOT desires to extend its current funding for the enhancement and operation of the traffic signal system through FY 2014/2015. The JPA will provide continuance of salaries for seven staff members associated with the Intelligent Traffic System Center and the Signal System Operations. The total funding is not to exceed \$2,500,000 for the duration of this JPA and not to exceed \$500,000 per year, as shown in the Exhibit B of this JPA.

Countywide (MRE)

Background and Justification: Palm Beach County (County) entered into a JPA with the FDOT on July 19, 2000 R2000-0744, which supplemented staff salaries to operate the computerized signal system. The term of this JPA was through Fiscal Year 2009/2010. FDOT wishes to execute a new contract that will continue to provide funding for the seven staff members from FY 2010/2011 through FY 2014/2015 as part of the enhancement and operation of traffic signal systems in the County. This JPA, when executed, will provide funds not to exceed \$500,000 per year, and total funds of \$2,500,000 for the duration of the JPA through FY 2014/2015, as detailed in Exhibit B of the attachment.

Attachments:

1. Agreements with Exhibits (5)
2. Resolutions (6)
3. R2000-0744

Recommended by:

Don Murbey
Division Director

Date

04/19/2010

Approved by:

S. T. Webb
County Engineer

Date

5/3/10

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2010	2011	2012	2013	2014
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	\$500,000	\$500,000	\$500,000	\$500,000
External Revenues	-0-	(\$500,000)	(\$500,000)	(\$500,000)	(\$500,000)
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	-0-	-0-	-0-	-0-	-0-

ADDITIONAL FTE

POSITIONS (Cumulative) _____

Is Item Included in Current Budget?

Yes X

No _____

Budget Acct No.: Fund 1201 Dept. 360 Unit 3222 Revenue Source 3148

B. Recommended Sources of Funds/Summary of Fiscal Impact:

County Transportation Trust Fund

UTCS FDOT Support

Federal Grant Indirect-Transportation

This grant, including seven positions, is currently budgeted for FY 2010 and has been included in the proposed FY 2011 budget.

C. Departmental Fiscal Review: Attillhite

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

no local match required

[Signature]
OFMB
5/11/10
5-3-10
5/12/10

[Signature] 5/10/10
Contract Dev. and Control
E. Jones 5/10/10

B. Approved as to Form and Legal Sufficiency:

[Signature] 5/13/10
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

DUNS No.: 13-202-6527
CFDA No.: N/A
CSFA No.: N/A

Contract No.: _____
FM Nos.: 229253-3-54-01
FEID No.: VF-596-000-785

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
JOINT PARTICIPATION AGREEMENT

THIS Joint Participation Agreement (hereinafter referred to as "Agreement"), entered into this _____ day of _____, 20____, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and Palm Beach County, located at 2300 North Jog Road, West Palm Beach, Florida, 33411, hereinafter referred to as the COUNTY.

WITNESSETH

WHEREAS, the DEPARTMENT and the COUNTY are desirous of having the COUNTY make certain enhancements in connection with Financial Management (FM) Number 229253-3-54-01 (Funded in Fiscal Year 2011-2015) for the Enhancement and Operations of the Computerized Traffic Control Signal System that monitors and control traffic signals at intersections on the State Highway Roadway System within the limits of Palm Beach County, Florida. Refer to **Exhibit "A"** and **Exhibit "B"**, Scope of Services and Project Cost and Cash Flow Projection, respectively, attached hereto and made of part hereof; and,

WHEREAS, the DEPARTMENT is prepared to contribute funds toward implementing these enhancements consisting of the following:

1. Signal system timing plan development and implementation
2. Signal system communications network operations and maintenance
3. Signal system software maintenance

WHEREAS, for purposes of this Agreement, enhancements to be made as stated above are hereinafter referred to as the PROJECT; and,

WHEREAS, said Project is on the State Highway System, is not revenue producing and is contained in the DEPARTMENT'S Adopted Work Program; and,

WHEREAS, the improvements are in the interest of both the COUNTY and the DEPARTMENT and it would be more practical, expeditious, and economical for the COUNTY to perform such activities; and,

WHEREAS, the COUNTY by Resolution No. _____ adopted on _____, 20____, a copy of which is attached hereto and made a part hereof, authorizes the proper officials to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the Project, the parties agree to the following:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The COUNTY shall commence and complete the Project as described in **Exhibit "A"** with all practical dispatch in a sound, economical, and efficient manner and in accordance with the provisions herein.

The COUNTY shall be responsible for assuring that the Project complies with all applicable Federal, State and Local laws, rules, regulations, guidelines and standards.

3. The DEPARTMENT shall make available to the COUNTY upon request any design plans, standards, or specifications relevant to the COUNTY enhancement activities. The COUNTY shall be responsible for verifying the accuracy of design plans as supplied by the Department and shall revise them as necessary to reflect current conditions.
4. The COUNTY shall have the sole responsibility for resolving claims and requests for additional work for the Project. The COUNTY will make best efforts to obtain the DEPARTMENT input in its decisions.
5. The DEPARTMENT agrees to pay the COUNTY for services described in **Exhibit "A"** of this Agreement. The total DEPARTMENT share towards this PROJECT is an estimated amount not to exceed TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00), for actual costs incurred. This amount is based upon the estimate set forth in **Exhibit "B"**. In the event the actual cost of the PROJECT exceeds the DEPARTMENT'S share of TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00), any additional cost shall be the sole responsibility of the COUNTY.

The Project cost shall be allocated and expended in accordance with the Project Cost and Cash Flow Projection as outlined in the attached **Exhibit "B"**. Any remaining funding not expended after the DEPARTMENT has reimbursed the COUNTY for actual cost and expenditures on the Project, during the DEPARTMENT'S fiscal year, will be unencumbered and removed from the contract 120 days after the end of DEPARTMENT'S fiscal year.

6. In order for the COUNTY to obtain payment for services under this Agreement, the COUNTY shall submit the following:
 - a. Progress report(s) reflecting the invoice period.
 - b. An invoice in Department Approved Format.
 - c. Documentation supporting the invoice amount. Supporting documentation shall include copies of employee timesheets and payroll information, invoices for purchases, training, etc.
 - d. Monthly delay reduction report as a result of signal retimings.

All costs charged to the Project, including any approved services contributed by the COUNTY or others shall be supported by items mentioned above in paragraph 6c.

7. The COUNTY will comply with the Federal and State Audit provisions and the Single Audit Compliance Requirements set forth in **Exhibit "C"** which is attached hereto and made part of this Agreement.
8. The COUNTY must submit the final invoice to the DEPARTMENT within 120 days after the final acceptance of the Project. Invoices submitted after the 120 days time period will not be paid.
9. The COUNTY acknowledges and agrees that the DEPARTMENT'S obligation to pay the sum set forth herein is contingent upon an annual appropriation by the Florida Legislature.

10. In the event the Project costs or Project modifications increase or exceed the amount authorized in paragraph 5, the DEPARTMENT and the COUNTY shall meet and attempt to mutually agree to the amount and distribution of the additional funding needed to complete the Project. Any funding increase or modifications to the Project shall be added by means of an Amendment to the Agreement to be signed by both parties before work is undertaken. However, in the event the COUNTY and the DEPARTMENT fail to negotiate an Amendment for any reason whatsoever, then the increase in the Project costs will be the sole responsibility of the COUNTY.
11. Project costs eligible for DEPARTMENT participation will be allowed only from the date of this Agreement. It is understood that DEPARTMENT participation in eligible Project costs is subject to:
 - a) Legislative approval of the DEPARTMENT'S appropriation request in the Work Program year that the Project is scheduled to be committed.
 - b) The understanding that disbursement of funds will be made in accordance with the cash flow projection described in **Exhibit B**.
 - c) Approval of all plans, specifications, contracts, and all other terms of this Agreement.
12. The COUNTY shall provide the DEPARTMENT with a time-phased schedule of the DEPARTMENT funds to be expended on the Project. This schedule shall show estimated disbursements for the entire term of the Project by quarter for each fiscal year. The schedule may be divided by Project phase where such division is determined to be appropriate by the DEPARTMENT.
13. The COUNTY shall establish for the Project, in conformity with uniform requirements that may be established by the DEPARTMENT, program guidelines, or procedures to facilitate the administration of the financing program, separate accounts to be maintained within its existing accounting system or establish independent accounts. Such accounts are referred to herein collectively as the 'Project Account'. The Project Account information shall be made available upon request by the DEPARTMENT at any time during the period of this Agreement and for a period of five years after the final payment is made.
14. The COUNTY shall provide to the DEPARTMENT for each of its fiscal years for which the Project account remains open, an audit report prepared either by its official auditor or audit agency or an independent Certified Public Accountant, reflecting the use of the fund of the DEPARTMENT, the COUNTY, and those from any other source with respect to the Project. Audits shall be performed in accordance with Generally Accepted Government Auditing Standards contained in the Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the U.S. General Accounting Office and OMB Circulars A-133 where applicable. The COUNTY shall require its auditors to include in their report a schedule of project assistance as described in **Exhibit 'A'**, Special Considerations.
15. In determining the amount of any payment, the DEPARTMENT will exclude all Project costs incurred by the COUNTY prior to the effective date of this Agreement, costs which are not provided for in the latest approved budget for the Project, and costs attributable to goods

or services received under a contract or other arrangements which have not been approved in writing by the DEPARTMENT.

16. Prior to performing any of the work set forth in Exhibit A, Scope of Services, the County must obtain approval in writing by the DEPARTMENT. The COUNTY shall not execute any contract or obligate itself in any manner requiring the disbursement of DEPARTMENT funds to consultants, subconsultants, contractors and/or subcontractors, and/or any other third party with respect to the Project without the prior written approval of the DEPARTMENT. Failure to obtain such approval shall be sufficient cause for nonpayment by the DEPARTMENT. The DEPARTMENT specifically reserves unto itself the right to review the qualifications of any consultants, subconsultants, contractors and/or subcontractors to approve or disapprove the employment of the same.
17. It is understood and agreed by the parties hereto that participation by the DEPARTMENT in a Project with the COUNTY, where said Project involves a consultant contract for engineering, architecture or surveying services, is contingent on the COUNTY complying in full with provisions of Section 287.055, Florida Statutes, Consultant's Competitive Negotiation Act. In addition, the COUNTY is required to communicate with the DEPARTMENT at all times in order to ensure that the COUNTY has hired a well qualified and adequately staffed consultant and/or contractor to administer all services required for this Project. In all cases, the County's Attorney shall certify to the DEPARTMENT that selection has been accomplished in compliance with the Consultant's Competitive Negotiation Act.
18. The COUNTY agrees that the Project facilities and equipment will be used by the COUNTY to provide and/or support enhancements to the operation of the computerized traffic signal system for the period of the useful life of such facilities and equipment as determined in accordance with general accounting principles and approved by the DEPARTMENT. The COUNTY further agrees to maintain the Project facilities and equipment in good working order for the useful life of said facilities or equipment.
19. The COUNTY agrees that no federal appropriated funds have been paid or will be paid by or on behalf of the COUNTY, to any person for influencing or attempting to influence any 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.
20. In the event it becomes necessary for the DEPARTMENT or COUNTY to institute suit for the enforcement of the provisions of this Agreement, each party shall be responsible to pay their own attorney fees and court costs. Venue with respect to any such litigation shall be in Broward County.
21. Should the DEPARTMENT and the COUNTY decide to proceed with subsequent phases of the Project, the Agreement may be amended to identify the respective responsibilities and the financial arrangement between the parties.
22. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the COUNTY under any circumstances without the prior written consent of

the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.

23. Except as otherwise set forth herein, this Agreement shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the Project is completed as evidenced by the written acceptance of the DEPARTMENT or June 30, 2015, whichever occurs first.
24. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Department of Financial Services under Section 215.422(14), Florida Statutes, or by the Department's Comptroller under Section 334.044(29), Florida Statutes.
25. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the DEPARTMENT'S Project Manager prior to payments. The DEPARTMENT will render a decision on the acceptability of services within 10 working days of receipt of a Progress Report. The DEPARTMENT reserves the right to withhold payments for work not completed, or work completed unsatisfactorily, or work that is deemed inadequate or untimely by the DEPARTMENT. Any payment withheld will be released and paid to the COUNTY promptly when work is subsequently performed.
26. Bills for fees or other compensation for services for expenses shall be submitted in detail sufficient for proper preaudit and postaudit thereof.
27. COUNTY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt of an invoice from the COUNTY, the DEPARTMENT has (10) ten working days to inspect and approve the goods and services where working day is defined as any day of the week excluding Saturday, Sunday and any legal holiday as designated in Section 110.117, Florida Statutes. The DEPARTMENT has 20 calendar days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 calendar days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
28. If payment is not available within 40 calendar days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the COUNTY. Interest penalties of less than one (1) dollar will not be enforced, unless the COUNTY requests payment. Invoices that have to be returned to the COUNTY because of COUNTY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
29. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for contractors/vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850)410-9724 or by calling the Department of Financial Services Hotline at 1-800-848-3792.
30. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred

includes the COUNTY 'S general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

31. In the event this contract is for services in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and a term for a period of more than one year, the provisions of Section 339.135(6)(a), Florida Statutes, are hereby incorporated:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than one year."

32. The COUNTY will comply with all Federal, State, and Local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under the Agreement.
33. The COUNTY warrants that it has not employed or obtained any company or person, other than bona fide employees of the COUNTY, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the COUNTY. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.
34. With respect to any of the COUNTY'S agents, consultants, subconsultants, contractors, and/or sub-contractors, such party in any contract for this Project shall agree to indemnify, defend, save and hold harmless the DEPARTMENT from all claims, demands, liabilities, and suits of any nature arising out of, because of or due to any intentional and/or negligent act or occurrence, omission or commission of such agents, consultants, subconsultants, contractors and/or subcontractors. The COUNTY shall provide to the DEPARTMENT written evidence of the foregoing upon the request of the DEPARTMENT. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the DEPARTMENT for its own negligence.
35. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
36. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements or understandings concerning

the subject matter of this agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

37. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation - District Four
3400 West Commercial Blvd.
Fort Lauderdale, Florida 33309-3421
Attn: Leos A. Kennedy, Jr.
With a copy to: Jonathan Overton
A second copy to: District General Counsel

If to the COUNTY:

Palm Beach County
2300 North Jog Road
West Palm Beach, Florida 33411
Attn: Dan Weisberg, Director
With A Copy to: City Attorney

IN WITNESS WHEREOF, this Agreement is to be executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Agreement by Resolution No. _____, hereto attached.

PALM BEACH COUNTY, Florida, A
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: _____
NAME: _____
TITLE: CHAIRPERSON
_____ day of _____, 20____

BY: _____
MICHAEL BIENVENU, PhD, P.E.
DIRECTOR OF TRANSPORTATION OPERATIONS

ATTEST:
SHARON R. BOCK

LEGAL REVIEW:

CLERK & COMPTROLLER (SEAL)
CIRCUIT COURT

BY: _____
OFFICE OF THE GENERAL COUNSEL

APPROVED AS TO FORM

APPROVED:

BY: _____
COUNTY ATTORNEY

BY: _____
PROFESSIONAL SERVICES ADMINISTRATOR

APPROVED AS TO TERMS AND CONDITIONS:

BY: 
DAN WEISBERG
DIRECTOR, TRAFFIC ENGINEERING

EXHIBIT 'A'

SCOPE OF SERVICES

PROJECT DESCRIPTION:

The Project funds provide for enhancement of the Palm Beach County Computerized Traffic Signal System with Salary and Compensation for Two (2) Signal System Engineer Technicians and One (1) Signal System Operations and Timing Engineer, One (1) Signal System Utility and Communications Specialist, One (1) ITS and Signal System Control Room Supervisor, One (1) ITS and Signal System Control Room Operator , and One (1) Signal Timing Engineer. Priority will be given to development of systems timing plans for intersections on the State Highway System (SHS), including calculating and reporting the delay reduction as a result of each signal retiming, and to the communications network serving the SHS. The County must expend at least sixty percent (60%) of the Department's annual budget to maintain and enhance the operation of the signal system on the State Highway System. All specialized equipment and signal analysis software will be utilized to facilitate effective system control and communications as the system is expanded and is integrated into a regional ITS (Intelligent Transportation System).

SPECIAL CONSIDERATIONS BY COUNTY:

The County shall provide monthly a summary detail of technical work which will include the road segments on which signal coordination and retiming was performed; the total numbers of signals retimed in those road segments; the percent of signals retimed on the SHS; the percent of signals retimed on the non-SHS roads; and the percent of expected delay reduction for each signal retiming.

AUDITS: See Exhibit 'C'

TECHNICAL WORK:

The County shall obtain prior written approval of any signal system software enhancement from the DEPARTMENT prior to initiating such enhancement. The COUNTY shall also obtain written approval from the DEPARTMENT prior to affecting any modifications to the communication network serving the State Highway System, including installation of fiber optic communications facilities. All specialized equipment shall be approved in writing by the DEPARTMENT prior to purchase by the COUNTY. The Signal System Operations and Timing Engineers shall enhance the operations and efficiency of the State Highway System by performing the following duties:

1. Signal System Operations and Timing Engineers (SSOTE) must be a Florida Professional Engineer
2. SSOTE must develop system control section and isolated timing plans. Such functions must be the primary function of the SSTOE and must be limited to traffic control on the State Highway System (SHS)
3. Data Collection to be performed by the COUNTY as required to develop timings. Anticipated data needed includes traffic counts and condition diagrams.
4. The County must submit status of work performed with each invoice submitted for payment.
5. SSTOE may perform other functions relating to the operation of the Traffic Signal System and other ITS related systems. At a minimum, the SSTOE must spend 75% of their time working on signal timing on the SHS. The remaining 25% may be spent on ITS related projects.

In addition to the SSTOE, the following position description would define the activities of other personnel listed in this Agreement:

DETAILED POSITION DESCRIPTION AND JOB FUNCTIONS:

1. Signal System Operations Engineers and Technicians:

- Develop and analyze signal timing plans for coordinated intersection for various times-of-day from the view points of progression, delay, stops and fuel-efficiency.
- Develop and analyze signal timing for isolated intersections that best suit the variations in traffic demand
- Implement newly developed signal timing plans and fine tune to suite the field conditions: related to queuing, speed and offsets.
- Prepare back-up timing plans for select arterials with “Time Based Coordination (TBC)”.
- Identify the arterials with congestion and delay problems and conduct before and after travel time-delay studies, fine tune, and optimize the timings for improved progression.
- Respond to public complaints on problem intersections; investigate, analyze and take necessary actions to alleviate the problem depending on the existing facility and the standard operational procedures.
- Document the complaints and the actions taken, and design new databases when required.
- Software used to undertaking the above tasks: Synchro, Transyt-7F, Streetwide (2070 Controllers), HCS Simulation package - NETSIM, TBC programming packages – Smartways and LM System and MVRAP.
- Individual Intersection Evaluation/ Investigation
These require database evaluations, along with field review and inspections during AM. Midday and PM peak periods, with before and after field reviews to evaluate results of changes made. Reports of all intersections evaluated are also compiled on a monthly basis.
- Arterial Retiming
This includes field evaluation of each intersection along the arterial to determine that each location is functioning properly before arterial analysis can begin. If any intersections involved in an arterial segment for retiming are not functioning properly, then extensive review and research takes place to determine and resolve problems. Database computer programming of each intersection is created to establish proper arterial timing evaluation. Timing runs are performed along arterials before changes are made and “multiple” time consuming runs are performed as timing changes are made in order to achieve the best possible timing results. The data collected both before and after arterial retimings, will be submitted monthly for use in determining delay reductions achieved as a result of the arterial retimings.
- Review and Inspection of new intersection
 - a. Reviewing requests by citizens, county commissioners, consultant and other agencies for traffic signal installations, modifications, and other traffic related operations.
 - b. Inspecting new and/or rebuilt intersections coordinating with all the relevant organizations to bring those into operations.

2. Signal System Database Management Engineers

- Compile the database coding for new intersections; modifying the existing ones as and when required; and monitoring the operation of the computer controlled intersections for proper operation.
- Create the arterial files and sets up real time time-space diagrams, for the purpose of monitoring the progression on the arterials on a countywide basis.

3. ITS Signal System Control Room Supervisors and Operators

- Employee monitors control room console, responds to requests from office and field personnel on status of intersections, reports any major communications failures, runs analysis and plots of signal operations.
4. Signal System Utility and Communications Specialists
- Employee responds to any of the following communications problems:
 - No communications due to a bad RCU (modem)
 - No communications due to lack of power
 - Reset of RCU due to power surges
 - No communications due to a cable cut caused by construction
 - No communications due to an accident which destroyed the equipment
 - Incorrect timing settings
 - No communications due to BellSouth Problems
 - Bad communications due to noise
 - Faulty protector on communications lines
 - Missing or incorrect green returns
 - Missing or incorrect green returns
 - Provide an explicit description of the exact location cable cuts
 - Provide the approximate length of the damaged cable, size of cable and type of cable
 - Take pictures of cable cuts and the general area to include equipment on site, locate markings, flags, etc.
 - Provide prime Contractor's company name, mailing address, email address, project manager's name and telephone number
 - Provide prime sub-Contractor's company name, mailing address, email address, project manager's name and telephone number
 - Perform temporary repairs if possible. Record time spent and material used
 - Inspection of new communication lines:
 - Inspect communication cable and conduit provided
 - Inspect pull and junction boxes provided
 - Inspect and ensure that the correct depth is used for the communications cable
 - Inspect proper grounding
 - Inspect proper location of all communication hardware
 - Inspect and ensure that the correct installation procedures were followed
 - File reports and perform follow-ups to ensure corrective action is taken to rectify all non-complaint items on the punch list

PROGRESS REPORT: The County shall prepare quarterly progress reports for submission to the Department along with its request for payment. These reports should be presented in a format which is acceptable to the Department and shall identify the progress of technical work as described herein that has been undertaken, the work products produced, and key events.

Exhibit B
Project Cost and Cash Flow Projection

PROJECT COSTS:

- I. Personnel: Seven (7) Employees
a. Salary Compensation /Wages & Benefits:
- Subtotal: \$500,000.00

PARTICIPATION:

1. Maximum Federal Participation (FHWA) Surface
Transportation Program Funds (50%) Annually = \$250,000.00
2. Maximum State Participation (50% match) Annually = \$250,000.00
3. County Participation (0%) Annually = \$ 0.00
- TOTAL PROJECT COST: \$500,000.00/ANNUALLY

ESTIMATED PROJECT COST AND CASH FLOWS:

The following cash flow projection is expected for the Project (\$ x 1000) and contingent upon legislative budget approval each Fiscal Year.

Fiscal Year	1 st Qtr.	2 nd Qtr.	3 rd Qtr.	4 th Qtr.	FY Total
FY 10/11	\$125	\$125	\$125	\$125	\$500
FY 11/12	\$125	\$125	\$125	\$125	\$500
FY 12/13	\$125	\$125	\$125	\$125	\$500
FY 13/14	\$125	\$125	\$125	\$125	\$500
FY 14/15	\$125	\$125	\$125	\$125	\$500

EXHIBIT "C"

FEDERAL AND/OR STATE FUNDED CONTRACTS

The administration of resources awarded by the Department to **PALM BEACH COUNTY** may be subject to audits and/or monitoring by the Department, as described in this section.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. In the event the Department determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department staff to **PALM BEACH COUNTY** regarding such audit. **PALM BEACH COUNTY** further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the FDOT's Office of Inspector General (OIG) and Florida's Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

Recipients of federal funds (i.e. state, local government, or non-profit organizations as defined in OMB Circular A-133, as revised) are to have audits done annually using the following criteria:

1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. This agreement indicates Federal resources awarded through the Department by this agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. Federal awards are to be identified using the Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, and name of the awarding federal agency.

PART II: STATE FUNDED

Recipients of state funds (i.e. a nonstate entity as defined by Section 215.97(2)(l), Florida Statutes) are to have audits done annually using the following criteria:

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services and the CFO; and Chapters 10.550 (local governmental entities) or

10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. This agreement indicates state financial assistance awarded through the Department by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2)(d), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. However, if the recipient elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. State awards are to be identified using the Catalog of State Financial Assistance (CSFA) title and number, award number and year, and name of the state agency awarding it.

PART III: OTHER AUDIT REQUIREMENTS

The recipient shall follow up and take corrective action on audit findings. Preparation of a summary schedule of prior year audit findings, including corrective action and current status of the audit findings is required. Current year audit findings require corrective action and status of findings.

Records related to unresolved audit findings, appeals, or litigation shall be retained until the action is completed or the dispute is resolved. Access to project records and audit work papers shall be given to the FDOT, the Department of Financial Services, and the Auditor General. This section does not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of state financial assistance or limit the authority of any other state official.

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this agreement shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:
 - A. The Department at each of the following address:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison
 - B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132
 - C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.

2. In the event that a copy of the reporting package for an audit required by PART I of this agreement and conducted in accordance with OMB Circular A-133, as revised, is not required to be submitted to the Department for reasons pursuant to section .320 (e)(2), OMB Circular A-133, as revised, the recipient shall submit the required written notification pursuant to Section .320 (e)(2) and a copy of the recipient's audited schedule of expenditures of Federal awards directly to each of the following:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

In addition, pursuant to Section .320 (f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320 (c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department at each of the following addresses:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

3. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:

A. The Department at each of the following address:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

B. The Auditor General's Office at the following address:

Auditor General's Office
Room 401, Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or the management letter required by PART III of this agreement shall be submitted by or on behalf of the recipient directly to:

A. The Department at each of the following address:

Florida Department of Transportation,
3400 W. Commercial Blvd.
Ft. Lauderdale, FL 33309
Karen Maxon, District Single Audit Liaison

5. Any reports, management letter, or other information required to be submitted to the Department pursuant to this agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

6. Recipients, when submitting financial reporting packages to the Department for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of this agreement for a period of at least five years from the date the audit report is issued, and shall allow the Department, or its designee, CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department, or its designee, CFO, or Auditor General upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

RESOLUTION NO. R-2010-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY FLORIDA, AUTHORIZING EXECUTION OF A JOINT PARTICIPATION AGREEMENT WITH THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF FLORIDA AND PROVIDING WHEN THIS RESOLUTION WILL TAKE EFFECT.

WHEREAS, the State of Florida Department of Transportation and Palm Beach County (County) desire to enter into a Joint Participation Agreement, and;

WHEREAS, the Agreement provides funds for salary compensation of seven staff members of the County to operate the Computerized Traffic Signal System at the Vista Center ITS Facility, and;

WHEREAS, this Amendment provides an annual funding of \$500,000 starting from Fiscal Year 2010/2011 through the Fiscal Year 2014/2015 not to exceed a total of \$2,500,000 for the duration of the contract;

WHEREAS, the State of Florida has requested the County execute and deliver the Agreement to the State of Florida, Department of Transportation.

NOW, THEREFORE be it resolved by the Board of County Commissioners of Palm Beach County, Florida, that the Chair is hereby authorized to execute and deliver to the State of Florida Department of Transportation, the aforementioned JPA.

1. The recitations set forth herein above are true, accurate and correct and are incorporated herein, and will take effect upon adoption.
2. This resolution will take effect upon its adoption.

(Intentionally Left Blank)

The foregoing resolution was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, was as follows:

- Commissioner Burt Aaronson, Chair -
- Commissioner Karen Marcus, Vice Chair -
- Commissioner Jeff Koons -
- Commissioner Shelley Vanna -
- Commissioner Steven Abrams -
- Commissioner Jess R. Santamaria -
- Commissioner Priscilla A. Taylor -

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2010.

PALM BEACH COUNTY,
FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

SHARON R. BOCK,
CLERK & COMPTROLLER
CIRCUIT COURT

By: _____
Assistant County Attorney

By: _____
Deputy Clerk

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Commissioner Burt Aaronson, Chair	-
Commissioner Karen T. Marcus, Vice Chair	-
Commissioner Jeff Koons	-
Commissioner Shelley Vanna	-
Commissioner Steven Abrams	-
Commissioner Jess R. Santamaria	-
Commissioner Priscilla A. Taylor	-

The Chair thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2010.

PALM BEACH COUNTY,
FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

SHARON R. BOCK,
CLERK & COMPTROLLER
CIRCUIT COURT

By: _____
Assistant County Attorney

By: _____
Deputy Clerk

ATTACHMENT 3

FM No: 229253/1/54/03

F.A. No:

Fund Code: XU & DDR

Contract No: AI599

Vendor No: VF 596-000-785-043

RZM-1744

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
PALM BEACH COUNTY
JOINT PARTICIPATION AGREEMENT

THIS AGREEMENT, entered into this 19 day of July, 2000, by and between the State of Florida Department of Transportation hereinafter called the DEPARTMENT, and the PALM BEACH COUNTY, located at P. O. Box 21229, West Palm Beach, Florida 33416-4000, hereinafter called the COUNTY.

WITNESSETH

WHEREAS, the DEPARTMENT and the COUNTY mutually agree to provide funding for increased staffing to enhance the operation of the Palm Beach County Computerized Traffic Signal System (FM #229253/1/54/03), hereinafter referred to as the PROJECT; and,

WHEREAS, the DEPARTMENT is prepared to contribute funds towards the enhancement of the operation for the Palm Beach County Computerized Traffic Signal System, including but not limited to, Installation of Fiber Optic Communication Facilities and for Salary Compensation for Two(2) Signal System Engineer Technicians and One (1) Signal System Operations and Timing Engineer, as further described in Exhibit "A"; and,

WHEREAS, the PROJECT is in the interest of both the DEPARTMENT and the COUNTY and it would be more practical, expeditious, and economical for the COUNTY to perform such activities; and,

WHEREAS, the resolution R-2000-0744 a copy of which is attached hereto and made a part hereof, authorizes the COUNTY to enter into this AGREEMENT.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from joint participation on the PROJECT, the parties agree to the following:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. The COUNTY shall commence the PROJECT on July 21, 2000 and complete the PROJECT on or before July 20, 2005, as described in Exhibit "A", with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws.
3. The COUNTY shall make available to the DEPARTMENT upon request any data, reports, records,

contracts and other documents relating to the PROJECT.

4. The COUNTY shall be responsible for assuring that the PROJECT complies with all Federal Highway Administration (FHWA) standards, as outline in Attachment I (Form 1273), and DEPARTMENT standards.
5. The DEPARTMENT agrees to reimburse the COUNTY for direct PROJECT related costs not to exceed ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) over a period of five (5) years. This amount represents the total estimated costs of the PROJECT and pursuant to section 287.0582, the DEPARTMENT's obligation to pay under this section is contingent upon an annual appropriation by the Florida Legislature.

The DEPARTMENT shall reimburse the COUNTY a Maximum Limiting Amount of Seventy Five Thousand Dollars (\$75,000.00) QUARTERLY, but not to exceed the Maximum Limiting Amount of Three Hundred Thousand Dollars (\$300,000.00) ANNUALLY. These quarterly payments shall be made over a five(5) year period, but shall not exceed a Total Maximum Limiting Amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00). The COUNTY shall submit quarterly invoices along with progress reports to the DEPARTMENT for payment. The invoices and progress reports should be presented in a format which is acceptable to the DEPARTMENT and shall identify the progress of technical work as described herein that has been undertaken, the work products produced, and key events (Refer to Exhibit "B", attached).

6. The DEPARTMENT shall have ten (10) working days to approve any invoice submitted by the COUNTY. PROJECT costs eligible for DEPARTMENT participation will be allowed only from the date of final execution of the Agreement. Travel expenses are not authorized in this Agreement. The COUNTY shall submit invoices for fees and other compensation for services or expenses in detail sufficient for a proper pre-audit and post-audit thereof. Invoice(s) shall be submitted to: The State of Florida, Department of Transportation, at 3400 West Commercial Boulevard, Fort Lauderdale, Florida 33319. Attention: Jonathan Overton, Project Manager.
7. This Agreement and any interest herein shall not be assigned, transferred or otherwise encumbered by the COUNTY under any circumstances without the prior written consent of the DEPARTMENT. However, this Agreement shall run to the DEPARTMENT and its successors.
8. This Agreement shall continue in effect and be binding to both the COUNTY and the DEPARTMENT until the PROJECT is completed on or before June 30, 2005.

The DEPARTMENT shall make payment payable to the "Palm Beach County Board of County Commissions" and forward it to Attention: Charlie Walker, P. E. Director - Traffic Division, P. O. Box 21229, West Palm Beach, Florida 33416-1229.

10. The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the comptroller of the DEPARTMENT that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000 and which have a term for a period of more than one (1) year.
11. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the COUNTY's general accounting records and the project records, together with supporting documents and records of the Contractor and subcontractors performing work on the PROJECT, and all other records of the Contractor and subcontractors considered necessary by the Department for the proper audit of costs.
12. The DEPARTMENT may cancel this Agreement for refusal of the COUNTY to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 of the Florida Statutes, made or reviewed by the COUNTY in conjunction with this Agreement and shall make provisions in its Agreements with its consultants and sub-consultants to terminate for failure to comply with this provision.
13. The COUNTY warrants that it has not employed or obtained any company or person, other than bona fide employees of the COUNTY, to solicit or secure this Agreement, and it has not paid or agreed to pay any company, corporation, individual or firm, other than a bona fide employee employed by the COUNTY. For breach or violation of this provision, the DEPARTMENT shall have the right to terminate the Agreement without liability.
14. The COUNTY hereby agrees to be solely responsible for any third party claim, liability, lawsuit and damage award arising out of their own negligence in the performance of this agreement for acts, or decision of that party that are totally within the purview of that party or are the responsibility of that party under this agreement. The foregoing shall not constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statutes, Section 768.28, nor shall the same be construed to constitute agreement by any party to indemnify any other party for such other party's negligent, willful or intentional acts or omissions.

15. This Agreement is governed by and construed in accordance with the laws of the State of Florida.
16. Section 215.422(5), Florida Statutes, request the DEPARTMENT to include a statement of vendor rights in this Agreement. The COUNTY is hereby advised of the following time frames. Upon receipt, the DEPARTMENT has ten (10) days to inspect the goods and services provided by the COUNTY. The DEPARTMENT has twenty (20) days to deliver a request for payment to the Department of Banking and Finance. The twenty days are measured from the latter of the date the invoice is received or the goods and services are received, inspected and approved by the DEPARTMENT.
- If payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 215.422(b), Florida Statutes, will be due and payable, in addition to the invoice amount, to the COUNTY. Interest payments of less than one (1) dollar will not be enforced unless the COUNTY requests payment. Invoices which have to be returned to the COUNTY because of invoice preparations errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided the DEPARTMENT.
- A Vendor Ombudsman has been established with the Department of Banking and Finance. the duties of this individual include acting as an advocate of the COUNTY in the event that the COUNTY may be experiencing problems in obtaining timely payments from the DEPARTMENT. The Vendor Ombudsman may be contacted at (850) 410-9724 or by calling the State Comptroller's Hotline (1-800-848-3792).
17. This document incorporates and includes all prior negotiations, correspondence, conversations, Agreements, or understanding applicable to the matters contained herein, and the parties agree that there are no commitments, Agreements or understanding concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or Agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.
18. The Department agrees to pay the COUNTY for the PROJECT herein described at a compensation as detailed in this Agreement. Payment shall be made only after receipt and approval of quarterly invoices and progress reports unless advance payments are authorized by the State Comptroller under Section 215.422(14), Florida Statutes.
9. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public

building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO for a period of 6 months from the date of being placed on the convicted vendor list.

20. Any or all notices (except invoices) given or required under this Agreement shall be in writing and either personally delivered with receipt acknowledged or sent by certified mail, return receipt requested. All notices delivered shall be sent to the following addresses:

If to the DEPARTMENT:

Florida Department of Transportation - District Four
3400 West Commercial Boulevard
Fort Lauderdale, Florida 33309
Attn: Josephine Softy, Contractual Services Coordinator
With a copy to: District General Counsel
A second copy to: Jonathan Overton, Project Manager

If to the COUNTY:

Palm Beach County
P. O. Box 21229
West Palm Beach, Florida 33416-1229
Attn: Charlie Walker, P. E. - Director - Traffic Division
with a copy to: COUNTY Attorney

IN WITNESS WHEREOF, the COUNTY has caused this Joint Participation Agreement to be executed in its behalf this _____ day of _____, 2000, by the COUNTY Commission, and the DEPARTMENT has executed this Joint Participation Agreement through its District Secretary for District Four, Florida Department of Transportation, this 19 day of July, 2000. The effective date of this AGREEMENT shall be the date the last party to this Agreement has signed.

PALM BEACH COUNTY

R2000 0744

JUN - 6 2000

BY: Manda Ford Lee

CHAIRPERSON

DOROTHY H. WILKEN, CLERK

Board of County Commissioners

ATTEST:

By Judith Croshaw

DEPUTY CLERK

COUNTY CLERK



APPROVED:

BY: Marlene R. Blott

PALM BEACH COUNTY ATTORNEY

STATE OF FLORIDA

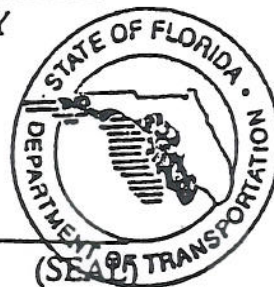
DEPARTMENT OF TRANSPORTATION

BY: Rick Chua

DISTRICT SECRETARY

ATTEST:

Marin Ertsey
EXECUTIVE SECRETARY



APPROVED:

BY: Ann R. Ferratto
DIRECTOR OF ADMINISTRATION

Date of Execution: 7/19/00

APPROVED: (AS TO FORM)

BY: [Signature]
DISTRICT LEGAL COUNSEL

EXHIBIT "A"
PROJECT DESCRIPTION AND RESPONSIBILITIES

This Exhibit forms an integral part of that certain Joint Participation Agreement (JPA) between the State of Florida, Department of Transportation and Palm Beach County Board of County Commissioners, dated _____, 2000.

PROJECT LOCATION: Palm Beach County, Florida

PROJECT DESCRIPTION: The project funds provide for enhancement of the Palm Beach County Computerized Traffic Signal System with Salary and Compensation for Two(2) Signal System Engineer Technicians and One (1) Signal System Operations and Timing Engineer, the purchase of Specialized Equipment and Software, for the Systems Operation and Maintenance and for the Installation of Fiber Optic Communication Facilities. Priority will be given to development of system timing plans for intersections on the State Highway System and to the communications network serving the State Highway System. The Technical staff will permit increased staffed hours for the system's control center which will enhance the system operation and maintenance. The specialized equipment and software will be utilized to facilitate effective system control and communications as the system is expanded and is integrated into a regional ITS (Intelligent Transportation System).

SPECIAL CONSIDERATIONS BY AGENCY:

AUDIT REPORTS: The COUNTY shall provide to the DEPARTMENT for each of its fiscal years for which the project account remains open, an audit report prepared either by its office auditor or audit agency or any independent certified public accountant, reflecting the use of the funds of the DEPARTMENT, the COUNTY, and those from any other source with respect to the project. Audits shall be performed in accordance with the generally accepted government auditing standards contained in the Standards of Audit of Governmental Organizations, Programs, Activities and Functions, issued by the U. S. General Accounting Office and OMB Circulars A-128 or A-133 where applicable. The COUNTY shall require its auditors to include in their report a schedule of project assistance that will reflect the DEPARTMENT'S Contract Number, Project FM Number and the Federal Identification Number, where applicable, and the amount of state and/or federal funding actions (receipt and disbursement of funds) with respect to the project.

TECHNICAL WORK: The COUNTY shall obtain written approval of any signal system software enhancement from the DEPARTMENT prior to initiating such enhancement. The COUNTY shall also obtain written approval from the DEPARTMENT prior to affecting any modifications to the communication network serving the State Highway System, including installation of fiber optic communication facilities. All specialized equipment shall be approved by the DEPARTMENT prior to purchase by the COUNTY. The Signal System Operations and Timing Engineers shall enhance the operations and efficiency of the State Highway System by performing the following duties:

1. Signal System Operations and Timing Engineers (SSOTE) must be a Florida Professional Engineer.
2. SSOTE must develop system control section and isolated timing plans. Such functions must be the primary function of the SSOTE and must be limited to traffic control on the State Highway System (SHS).
3. Data collection to be performed by the COUNTY as required to develop timings. Anticipated data needed includes traffic counts and condition diagrams.
4. The COUNTY must submit status of work performed with each invoice submitted for payment.
5. SSOTE may perform other functions relating to operation of the Traffic Signal System and other ITS related systems. As a minimum, the SSOTE must spend 75% of his time working on signal timing on the SHS. The remaining 25% may be spent on ITS related projects.

PROGRESS REPORT: The COUNTY shall prepare quarterly progress reports for submission to the DEPARTMENT along with its request for payment. These reports should be presented in a format which is acceptable to the DEPARTMENT and shall identify the progress of technical work as described herein that has been undertaken, the work products produced, and key events.

INVOICING: In order to obtain payment for services under this Agreement, the COUNTY shall submit the following:

1. Quarterly progress report(s) reflecting the invoice period.
2. Quarterly Invoice in Department Approved Format.
3. Documentation supporting the invoice amount. Supporting documentation shall include copies of employee timesheets and payroll information, invoices for purchases, training, etc.

Pursuant to section 6 of the Agreement, the DEPARTMENT shall have ten (10) working days to inspect and approve the progress report(s), invoice and documentation supporting the invoice prior to processing a given invoice for payment.

EXHIBIT "B"

PROJECT COST AND CASH FLOW PROJECTION

This Exhibit forms an integral part of that certain Joint Participation Agreement (JPA) between the State of Florida, Department of Transportation and Palm Beach County Board of County Commissioners, dated _____, 2000.

PROJECT DESCRIPTION: The project funds provide for enhancement of the Palm Beach County Computerized Traffic Signal System with Salary and Compensation for Two(2) Signal System Engineer Technicians and One (1) Signal System Operations and Timing Engineer, the purchase of Specialized Equipment and Software, for the Systems Operation and Maintenance and for the Installation of Fiber Optic Communication Facilities. Priority will be given to development of system timing plans for intersections on the State Highway System and to the communications network serving the State Highway System. The Technical staff will permit increased staffed hours for the system's control center which will enhance the system operation and maintenance. The specialized equipment and software will be utilized to facilitate effective system control and communications as the system is expanded and is integrated into a regional ITS (Intelligent Transportation System).

PROJECT COSTS:

I. PERSONNEL: Three (3) Employees

a:	Salary Compensation/ Wages & Benefits:	\$ 194,000.00
b:	Employee Expenses: Training	\$ 6,000.00
	Sub-Total:	\$ 200,000.00

II. OTHER COSTS:

a:	Purchase of Specialized Equipment & Software	
	System Operation and Maintenance	\$ 100,000.00

TOTAL PROJECT COSTS:

\$ 300,000.00 / ANNUALLY

PARTICIPATION:

1.	Maximum Federal Participation (FHWA) Surface Transportation Program Funds (66.66%) Annually	= \$200,000.00
2.	Maximum State Participation (33.33% match) Annually	= \$100,000.00
3.	County Participation (0%) Annually	= \$ 0.00
	TOTAL PROJECT COSTS:	<u>\$ 300,000.00 / ANNUALLY</u>

ESTIMATED CASH FLOW: The following cash flow projection is expected for the Project (\$ x 1000) and Contingent Upon Legislative Budget Approval for each Fiscal Year.

<u>Fiscal Year</u>	<u>1st Qtr.</u>	<u>2nd Qtr.</u>	<u>3rd Qtr.</u>	<u>4th Qtr.</u>	<u>Annual Total</u>
00/01	75.0	75.0	75.0	75.0	300.0
01/02	75.0	75.0	75.0	75.0	300.0
02/03	75.0	75.0	75.0	75.0	300.0
03/04	75.0	75.0	75.0	75.0	300.0
04/05	75.0	75.0	75.0	75.0	300.0

ATTACHMENT I

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

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XII. Certification Regarding Use of Contract Funds for Lobbying	9

ATTACHMENTS

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

I. GENERAL

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

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

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

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

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

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

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less

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

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

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

II. NONDISCRIMINATION

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

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

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

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

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

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

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

often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The

meetings will be conducted by the EEO Officer.

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

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

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

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

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

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

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

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

Personnel Actions: Wages, working conditions, and employee personnel actions shall be established and administered, and personnel actions, including hiring, upgrading, promotion, transfer, demotion, and termination, shall be taken without regard to race, color, sex, national origin, age or disability. The following procedures are allowed:

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

The contractor will periodically evaluate the spread of wages for each classification to determine any evidence of discriminatory practices.

In the event the union is unable to provide the contractor with a flow of minority and women referrals within the time limit of the collective bargaining agreement, the contractor will, independent recruitment efforts, fill the employment vacancies regardless of race, color, religion, sex, national origin, age or

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

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

6. Training and Promotion:

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

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

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

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

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

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

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

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

disability, making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents

the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

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

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

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

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

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

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

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

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

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

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

b. The contractors will submit an annual report to the SHA each year 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. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

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

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

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

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

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

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

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill,

pt as provided in paragraphs 4 and 5 of this Section IV.

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

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

Classification:

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

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

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

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

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

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

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

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

The wage rate (including fringe benefits where appropriate) pursuant to paragraph 2c or 2d of this Section IV shall be the wage rate for the additional classification from which work is performed in the classification.

of Fringe Benefits:

Over the minimum wage rate prescribed in the contract for laborers or mechanics includes a fringe benefit which is an hourly rate, the contractor or subcontractors, as appropriate, shall pay the benefit as stated in the wage determination.

tion or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

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

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

a. Apprentices:

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

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

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

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

b. Trainees:

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

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

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

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

c. Helpers:

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

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

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

Withholding:

The SHA shall upon its own action or upon written request of an

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

7. Overtime Requirements:

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

8. Violation:

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

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

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

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be main-

ined by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, journeymen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent of the types described in Section 1(b)(2)(B) of the Davis Bacon Act; daily and weekly number of hours worked; deductions made; and total wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section A, paragraph 3b, has found that the wages of any laborer or mechanic are less than the amount of any costs reasonably anticipated in providing for the work under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is feasible, that the plan or program is financially responsible, that the contractor has been communicated in writing to the laborers or journeymen affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written records of the registration of apprentices and trainees, and ratios and rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a statement of wages paid each of its employees (including apprentices, journeymen, and helpers, described in Section IV, paragraphs 4 and 5, and trainees and guards engaged on work during the preceding weekly period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Acquisition Regulation 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her authorized representative who pays or supervises the payment of the persons employed on the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

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

"own organization" shall be construed to include only those employees employed and paid directly by the prime contractor and those employees employed or rented by the prime contractor, with or without equipment. Such term does not include employees or equipment of a

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

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

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

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 State. 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).

subcontractor, assignee, or agent of the prime contractor.

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 on the contract as a whole and in general are to be limited to minor components of the overall contract.

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

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA 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 SHA 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 SHA has assured that each subcontract is evidenced in writing and that contains all pertinent provisions and requirements of the prime contract.

II. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA 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.

It is a condition of this contract, and shall be made a condition of any 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 their health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have the right of entry to any site of contract performance to inspect or investigate matters 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. 333).

FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on contracts 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, truthfully, 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, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

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

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

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

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

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

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

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

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

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt contract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions:

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary 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 participant shall submit an explanation of why it cannot provide the certification set out below. The certification or lack of certification will be considered in connection with the department or agency's determination whether to enter into this transaction. However, if the prospective primary participant to furnish a certification or explanation shall disqualify such a person from participation in this transaction.

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

d. The prospective primary participant shall provide immediate notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous because of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those rules.

The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it will 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.

The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that the participant is not debarred, suspended, ineligible, or voluntarily excluded from participation in this covered transaction, unless it knows that the certification is erroneous.

A participant may decide the method and frequency by which it will determine the eligibility of its principals. Each participant may, at its discretion, check the nonprocurement portion of the "Lists of Excluded Parties" included in the Federal Acquisition Regulation or Nonprocurement

Programs" (Nonprocurement List) which is compiled by the General Services Administration.

f. 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 a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

g. Except for transactions authorized under paragraph 1 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.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-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;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

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2. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

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.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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

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

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 may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

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 regulations, if a participant in a covered transaction knowingly enters 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.

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

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

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

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XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

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

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

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

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she 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.