Job No.: J1P3384
Route: 136
County: Atchison

JOB SPECIAL PROVISIONS TABLE OF CONTENTS (ROADWAY)

(Job Special Provisions shall prevail over General Special Provisions whenever in conflict therewith.)

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THIS SHEET HAS BEEN SIGNED, SEALED AND DATED ELECTRONICALLY

MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
105 W. CAPITOL AVE.
JEFFERSON CITY, MO 65102
Phone 1-888-275-6636

HDR Engineering
10450 Holmes Road, Suite 600
Kansas City, MO 64131
Certificate of Authority: 000856
Consultant Phone:816-360-2700

If a seal is present on this sheet, JSP's have been electronically sealed and dated.

JOB NUMBER: J1P3384
ATCHISON COUNTY, MO
DATE PREPARED: 7/30/2020

ADDENDUM DATE:

Only the following items of the Job Special Provisions (Roadway) are authenticated by this seal: ALL

Job No.: J1P3384
Route: 136
County: Atchison

JOB
SPECIAL PROVISION

A. General - Federal JSP-09-02F

1.0 Description. The Federal Government is participating in the cost of construction of this project. All applicable Federal laws, and the regulations made pursuant to such laws, shall be observed by the contractor, and the work will be subject to the inspection of the appropriate Federal Agency in the same manner as provided in Sec 105.10 of the Missouri Standard Specifications for Highway Construction with all revisions applicable to this bid and contract.

1.1 This contract requires payment of the prevailing hourly rate of wages for each craft or type of work required to execute the contract as determined by the Missouri Department of Labor and Industrial Relations and requires adherence to a schedule of minimum wages as determined by the United States Department of Labor. For work performed anywhere on this project, the contractor and the contractor's subcontractors shall pay the higher of these two applicable wage rates. State Wage Rates, Information on the Required Federal Aid Provisions, and the current Federal Wage Rates are available on the Missouri Department of Transportation web page at www.modot.org under "Doing Business with MoDOT", "Contractor Resources". Effective Wage Rates will be posted 10 days prior to the applicable bid opening. These supplemental bidding documents have important legal consequences. It shall be conclusively presumed that they are in the bidder's possession, and they have been reviewed and used by the bidder in the preparation of any bid submitted on this project.

1.2 The following documents are available on the Missouri Department of Transportation web page at www.modot.org under "Doing Business with MoDOT"; "Standards and Specifications". The effective version shall be determined by the letting date of the project.

General Provisions & Supplemental Specifications

Supplemental Plans to July 2020 Missouri Standard Plans
For Highway Construction

These supplemental bidding documents contain all current revisions to the published versions and have important legal consequences. It shall be conclusively presumed that they are in the bidder's possession, and they have been reviewed and used by the bidder in the preparation of any bid submitted on this project.

B. Contract Liquidated Damages

1.0 Description. Liquidated Damages for failure or delay in completing the work on time for this contract shall be in accordance with Sec 108.8. The liquidated damages include separate amounts for road user costs and contract administrative costs incurred by the Commission.

2.0 Period of Performance. Prosecution of work is expected to begin on the date specified below in accordance with Sec 108.2. Regardless of when the work is begun on this contract, all work shall be completed on or before the date specified below. Completion by this date shall be in accordance with the requirements of Sec 108.7.1.

Notice to Proceed: November 20, 2020
Completion Date: April 15, 2021

2.1 Calendar Days. The count of calendar days will begin on the date the contractor starts any construction operations on the project.

Job Number	Calendar Days	Daily Road User Cost
J1P3384	N/A	$1,800

3.0 Liquidated Damages for Contract Administrative Costs. Should the contractor fail to complete the work on or before the completion date specified in Section 2.0, or within the number of calendar days specified in Section 2.1, whichever occurs first, the contractor will be charged contract administrative liquidated damages in accordance with Sec 108.8 in the amount of **$750** per calendar day for each calendar day, or partial day thereof, that the work is not fully completed. For projects in combination, these damages will be charged in full for failure to complete one or more projects within the above specified completion date or calendar days.

4.0 Liquidated Damages for Road User Costs. Should the contractor fail to complete the work on or before the completion date specified in Section 2.0, or within the number of calendar days specified in Section 2.1, whichever occurs first, the contractor will be charged road user costs in accordance with Sec 108.8 in the amount specified in Section 2.1 for each calendar day, or partial day thereof, that the work is not fully completed. These damages are in addition to the contract administrative damages and any other damages as specified elsewhere in this contract.

C. Emergency Provisions and Incident Management

1.0 The contractor shall have communication equipment on the construction site or immediate access to other communication systems to request assistance from law enforcement or other emergency agencies for incident management. In case of traffic accidents or the need for law enforcement to direct or restore traffic flow through the job site, the contractor shall notify law enforcement or other emergency agencies immediately as needed. The area engineer's office shall also be notified when the contractor requests emergency assistance.

2.0 In addition to the 911 emergency telephone number for ambulance, fire or law enforcement services, the following agencies may also be notified for accident or emergency situation within the project limits.

Missouri Highway Patrol – Troop H 816-387-2345		
City of Rock Port, MO	Village of Brownville, NE	County of Atchison
Fire: 660-774-4121	Fire: 402-825-6151	Sheriff: 606-744-6271
Police: 660-744-2777		

2.1 This list is not all inclusive. Notification of the need for wrecker or tow truck services will remain the responsibility of the appropriate law enforcement agency.

2.2 The contractor shall notify law enforcement and emergency agencies before the start of construction to request their cooperation and to provide coordination of services when

emergencies arise during the construction at the project site. When the contractor completes this notification with law enforcement and emergency agencies, a report shall be furnished to the engineer on the status of incident management.

3.0 No direct pay will be made to the contractor to recover the cost of the communication equipment, labor, materials or time required to fulfill the above provisions.

D. Project Contact for Contractor/Bidder Questions

All questions concerning this project during the bidding process shall be forwarded to the project contact listed below.

Joyce Reynolds, Project Contact
North West District
3062 N. Belt Highway
Saint Joseph, MO 64506

Telephone Number: 816-387-2411
Email: Joyce.Reynolds@modot.mo.gov

All questions concerning the bid document preparation can be directed to the Central Office – Design at (573) 751-2876.

E. Supplemental Revisions JSP-18-01M

Stormwater Compliance Requirements

1.0 Description. This provision requires the contractor to provide a Water Pollution Control Manager (WPCM) for any project that includes land disturbance on the project site and the total area of land disturbance, both on the project site, and all Off-site support areas, is one (1) acre or more. Regardless of the area of Off-site disturbance, if no land disturbance occurs on the project site, these provisions do not apply. When a WPCM is required, all sections within this provision shall be applicable, including assessment of specified Liquidated Damages for failure to correct Stormwater Deficiencies, as specified herein. This provision is in addition to any other stormwater, environmental, and land disturbance requirements specified elsewhere in the contract.

1.1 Definitions. The project site is defined as all areas designated on the plans, including temporary and permanent easements. The project site is equivalent to the “permitted site”, as defined in MoDOT’s State Operating Permit. An Off-site area is defined as any location off the project site the contractor utilizes for a dedicated project support function, such as, but not limited to, staging area, plant site, borrow area, or waste area.

1.2 Reporting of Off-Site Land Disturbance. If the project includes any planned land disturbance on the project site, prior to the start of work, the contractor shall submit a written report to the engineer that discloses all Off-site support areas where land disturbance is planned, the total acreage of anticipated land disturbance on those sites, and the land disturbance permit number(s). Upon request by the engineer, the contractor shall submit a copy of its land disturbance permit(s) for Off-site locations. Based on the total acreage of land

disturbance, both on and Off-site, the engineer shall determine if these Stormwater Compliance Requirements shall apply. The Contractor shall immediately report any changes to the planned area of Off-site land disturbance. The Contractor is responsible for obtaining its own separate land disturbance permit for Off-site areas.

2.0 Water Pollution Control Manager (WPCM). The Contractor shall designate a competent person to serve as the Water Pollution Control Manager (WPCM) for projects meeting the description in Section 1.0. The Contractor shall ensure the WPCM completes all duties listed in Section 2.1.

2.1 Duties of the WPCM:

(a) Be familiar with the stormwater requirements including the current MoDOT State Operating Permit for construction stormwater discharges/land disturbance activities; MoDOT's statewide Stormwater Pollution Prevention Plan (SWPPP); the Corps of Engineers Section 404 Permit, when applicable; the project specific SWPPP, the Project's Erosion & Sediment Control Plan; all applicable special provisions, specifications, and standard drawings; and this provision;

(b) Successfully complete the MoDOT Stormwater Training Course within the last 4 years. The MoDOT Stormwater Training is a free online course available at MoDOT.org;

(c) Attend the Pre-Activity Meeting for Grading and Land Disturbance and all subsequent Weekly Meetings in which grading activities are discussed;

(d) Oversee and ensure all work is performed in accordance with the Project-specific SWPPP and all updates thereto, or as designated by the Engineer;

(e) Review the project site for compliance with the Project SWPPP, as needed, from the start of any grading operations until final stabilization is achieved, and take necessary actions to correct any known deficiencies to prevent pollution of the waters of the state or adjacent property owners prior to the engineer's weekly inspections;

(f) Review and acknowledge receipt of each MoDOT Inspection Report (Land Disturbance Inspection Record) for the Project within forty eight (48) hours of receiving the report and ensure that all Stormwater Deficiencies noted on the report are corrected as soon as possible, but no later than stated in Section 5.0.

3.0 Pre-Activity Meeting for Grading/Land Disturbance and Required Hold Point. A Pre-Activity meeting for grading/land disturbance shall be held prior to the start of any land disturbance operations. No land disturbance operations shall commence prior to the Pre-Activity meeting except work necessary to install perimeter controls and entrances. Discussion items at the pre-activity meeting shall include a review of the Project SWPPP, the planned order of grading operations, proposed areas of initial disturbance, identification of all necessary BMPs that shall be installed prior to commencement of grading operations, and any issues relating to compliance with the Stormwater requirements that could arise in the course of construction activity at the project.

3.1 Hold Point. Following the pre-activity meeting for grading/land disturbance and subsequent installation of the initial BMPs identified at the pre-activity meeting, a Hold Point shall occur prior to the start of any land disturbance operations to allow the engineer and WPCM

the time needed to perform an on-site review of the installation of the BMPs to ensure compliance with the SWPPP is met. Land disturbance operations shall not begin until authorization is given by the engineer.

4.0 Inspection Reports. Weekly and post run-off inspections will be performed by the engineer and each Inspection Report (Land Disturbance Inspection Record) will be entered into a web-based Stormwater Compliance database. The WPCM will be granted access to this database and shall promptly review all reports, including any noted deficiencies, and shall acknowledge receipt of the report as required in Section 2.1 (f.).

5.0 Stormwater Deficiency Corrections. All stormwater deficiencies identified in the Inspection Report shall be corrected by the contractor within 7 days of the inspection date or any extended period granted by the engineer when weather or field conditions prohibit the corrective work. If the contractor does not initiate corrective measures within 5 calendar days of the inspection date or any extended period granted by the engineer, all work shall cease on the project except for work to correct these deficiencies, unless otherwise allowed by the engineer. All impact costs related to this halting of work, including, but not limited to stand-by time for equipment, shall be borne by the Contractor. Work shall not resume until the engineer approves the corrective work.

5.1 Liquidated Damages. If the Contractor fails to complete the correction of all Stormwater Deficiencies listed on the MoDOT Inspection Report within the specified time limit, the Commission will be damaged in various ways, including but not limited to, potential liability, required mitigation, environmental clean-up, fines and penalties. These damages are not reasonably capable of being computed or quantified. Therefore, the contractor will be charged with liquidated damages specified in the amount of $2,000 per day for failure to correct one or more of the Stormwater Deficiencies listed on the Inspection Report within the specified time limit. In addition to the stipulated damages, the stoppage of work shall remain in effect until all corrections are complete.

6.0 Basis of Payment. No direct payment will be made for compliance with this provision.

COVID-19 Safety

1.0 Description. The coronavirus disease 2019 or COVID-19 has reached a pandemic stage across the United States, including the State of Missouri. To reduce the impact of COVID-19 outbreak conditions on businesses, workers, customers and the public, the contractor shall be aware of all COVID-19 guidance from the Center for Disease Control (CDC) and other government health mandates. The contractor shall conduct all operations in conformance with these safety directives. The guidance may change during the project construction and the contractor shall change and adapt their operation and safety protocols accordingly.

2.0 Safety Plan. The contractor shall include these procedures in the project safety plan as called for in the contract documents and revise the safety plan as needed.

3.0 Essential Work. In accordance with any state or local Stay at Home Order, care for the infrastructure has been deemed essential and MoDOT is moving forward with construction projects, this project is considered essential and the contractor and their employees, subcontractors and suppliers are considered essential business and performing essential functions.

4.0 Basis of Payment. Compliance with regulations and laws pertaining to COVID-19 is covered under Sec 107 of the Missouri Standard Specifications for Highway Construction. No direct payment will be made for compliance with this provision.

Anti-Discrimination Against Israel Certification

By signing this contract the Company certifies it is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel, companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel, or persons or entities doing business in the State of Israel as defined by Section 34.600 RSMo. This certification shall not apply to contracts with a total potential value of less than One Hundred Thousand Dollars ($100,000) or to contractors with fewer than ten (10) employees.

F. Utilities

1.0 For informational purposes only, the following is a list of names, addresses, and telephone numbers of the known utility companies in the area of the construction work for this improvement:

Utility Name	**Known Required Adjustment**	**Type**
CenturyLink 625 Cherry Street Columbia, MO 65201 Phone: (573) 634-1615	None	Communications, 5-inch conduit attached to underside of bridge

1.1 The existence and approximate location of utility facilities known to exist, as shown on the plans, are based upon the best information available to the Commission at this time. This information is provided by the Commission "as-is" and the Commission expressly disclaims any representation or warranty as to the completeness, accuracy, or suitability of the information for any use. Reliance upon this information is done at the risk and peril of the user, and the Commission shall not be liable for any damages that may arise from any error in the information. It is, therefore, the responsibility of the contractor to verify the above listing information indicating existence, location and status of any facility. Such verification includes direct contact with the listed utilities.

G. Contractor Quality Control NJSP-15-42

1.0 The contractor shall perform Quality Control (QC) testing in accordance with the specifications and as specified herein. The contractor shall submit a Quality Control Plan (QC Plan) to the engineer for approval that includes all items listed in Section 2.0, prior to beginning work.

2.0 Quality Control Plan.

(a) The name and contact information of the person in responsible charge of the QC testing.
(b) A list of the QC technicians who will perform testing on the project, including the fields in which they are certified to perform testing.
(c) A proposed independent third party testing firm for dispute resolution, including all contact information.
(d) A list of Hold Points, when specified by the engineer.
(e) The MoDOT Standard Inspection and Testing Plan (ITP). This shall be the version that is posted at the time of bid on the MoDOT website (www.modot.org/quality).

3.0 Quality Control Testing and Reporting. Testing shall be performed per the test method and frequency specified in the ITP. All personnel who perform sampling or testing shall be certified in the MoDOT Technician Certification Program for each test that they perform.

3.1 Reporting of Test Results. All QC test reports shall be submitted as soon as practical, but no later than the day following the test. Test data shall be immediately provided to the engineer upon request at any time, including prior to the submission of the test report. No payment will be made for the work performed until acceptable QC test results have been received by the engineer and confirmed by QA test results.

3.1.1 Test results shall be reported on electronic forms provided by MoDOT. Forms and Contractor Reporting Excel2Oracle Reports (CRE2O) can be found on the MoDOT website. All required forms, reports and material certifications shall be uploaded to a Microsoft SharePoint® site provided by MoDOT, and organized in the file structure established by MoDOT.

3.2 Non-Conformance Reporting. A Non-Conformance Report (NCR) shall be submitted by the contractor when the contractor proposes to incorporate material into the work that does not meet the testing requirements or for any work that does not comply with the contract terms or specifications.

3.2.1 Non-Conformance Reporting shall be submitted electronically on the Non-Conformance Report form provided on the MoDOT Website. The NCR shall be uploaded to the MoDOT SharePoint® site and an email notification sent to the engineer.

3.2.2 The contractor shall propose a resolution to the non-conforming material or work. Acceptance of a resolution by the engineer is required before closure of the non-conformance report.

4.0 Work Planning and Scheduling.

4.1 Two-week Schedule. Each week, the contractor shall submit to the engineer a schedule that outlines the planned project activities for the following two-week period. The two-week schedule shall detail all work and traffic control events planned for that period and any Hold Points specified by the engineer.

4.2 Weekly Meeting. When work is active, the contractor shall hold a weekly project meeting with the engineer to review the planned activities for the following week and to resolve any outstanding issues. Attendees shall include the engineer, the contractor superintendent or project manager and any foreman leading major activities. This meeting may be waived when,

in the opinion of the engineer, a meeting is not necessary. Attendees may join the meeting in person, by phone or video conference.

4.3 Pre-Activity Meeting. A pre-activity meeting is required in advance of the start of each new activity, except when waived by the engineer. The purpose of this meeting is to review construction details of the new activity. At a minimum, the discussion topics shall include: safety precautions, QC testing, traffic impacts, and any required Hold Points. Attendees shall include the engineer, the contractor superintendent and the foreman who will be leading the new activity. Pre-activity meetings may be held in conjunction with the weekly project meeting.

4.4 Hold Points. Hold Points are events that require approval by the engineer prior to continuation of work. Hold Points occur at definable stages of work when, in the opinion of the engineer, a review of the preceding work is necessary before continuation to the next stage.

4.4.1 A list of typical Hold Point events is available on the MoDOT website. Use of the Hold Point process will only be required for the project-specific list of Hold Points, if any, that the engineer submits to the contractor in advance of the work. The engineer may make changes to the Hold Point list at any time.

4.4.2 Prior to all Hold Point inspections, the contractor shall verify the work has been completed in accordance with the contract and specifications. If the engineer identifies any corrective actions needed during a Hold Point inspection, the corrections shall be completed prior to continuing work. The engineer may require a new Hold Point to be scheduled if the corrections require a follow-up inspection. Re-scheduling of Hold Points require a minimum 24-hour advance notification from the contractor unless otherwise allowed by the engineer.

5.0 Quality Assurance Testing and Inspection. MoDOT will perform quality assurance testing and inspection of the work, except as specified herein. The contractor shall utilize the inspection checklists provided in the ITP as a guide to minimize findings by MoDOT inspection staff. Submittal of completed checklists is not required, except as specified in 5.1.

5.1 Inspection and testing required in the production of concrete for the project shall be the responsibility of the contractor. Submittal of the 501 Concrete Plant Checklist is required.

6.0 Basis of Payment. No direct payment will be made for compliance with this provision.

H. <u>Restrictions for Migratory Birds</u> NJSP-16-06A

1.0 Description. Swallows or other bird species protected by the Migratory Bird Treaty Act may be nesting under the bridge or bridges that will be repaired under this contract.

2.0 Restrictions. To comply with the Migratory Bird Treaty Act, nests of protected species cannot be disturbed when active (eggs or young are present). Generally, nests are active between April 1 and July 31, but active nests can be present outside of these dates.

3.0 Avoidance Measures. The contractor shall not disturb active or inactive nests or destroy adults, eggs or young. In an effort to comply with the Migratory Bird Treaty Act, the contractor operations will be limited to the options established in the following sections.

3.1 Active or Inactive Nests. The contractor may work on the bridge if active or inactive nests are present, as long as the work does not impact or disturb the birds and nests. At a minimum, work shall not be performed within 10 feet of a nest; however, the contractor is responsible for ensuring that their activities do not impact the nests, eggs, or young.

4.0 Additional Responsibilities. If active bird nests remain after all reasonable avoidance measures have been taken, or if bird nests are observed during project construction, the contractor shall notify the Resident Engineer and contact MoDOT Environmental (573-526-4778) to determine if there are other allowable options.

I. Disadvantaged Business Enterprise (DBE) Program Requirements NJSP-20-02

1.0 Program Applicability. The subsequent sections will apply only to contracts involving U.S. Department of Transportation (USDOT) federal-aid or federal funded participation. Federal-aid or federal funded participation includes, but is not limited to, any funds directly or indirectly received by MoDOT, or authorized for distribution to or through MoDOT, by the USDOT or any operating administration within the USDOT. These provisions will not apply to Commission contracts funded exclusively with state funds, or state and local funds. Any contractor, subcontractor, supplier, DBE firm, and contract surety involved in the performance of a federal-aid contract shall be aware of and fully understand the terms and conditions of the USDOT DBE Program, as the terms appear in Title 49 CFR Part 26 (as amended), the USDOT DBE Program regulations; Title 7 CSR Division 10, Chapter 8 (as amended), and the Commission's DBE Program rules.

2.0 DBE Program Distinguished from Other Affirmative Action Programs. The USDOT DBE Program established by the U.S. Congress is not the same as, and does not involve or utilize, any of the elements or authority of other state or local affirmative action programs, nor does the program rely upon state legislation or gubernatorial executive orders for implementation or authorization, other than the general authority given the Commission in Section 226.150, RSMo. The USDOT DBE Program is implemented by the Commission and MoDOT, through and in conjunction with the FHWA, FTA and FAA, as a "recipient" defined in Title 49 CFR 26.5.

3.0 Policy Regarding DBE Firms. It is the policy of the U. S. Department of Transportation and MoDOT that businesses owned by socially and economically disadvantaged individuals have an opportunity to participate in the performance of contracts funded in whole or in part with federal funds. Consequently, the requirements of 49 CFR Part 26 (as amended) and the Commission's implementing state regulations in Title 7 CSR Division 10, Chapter 8, "Disadvantaged Business Enterprise Program", will apply to any contract funded in whole or part with federal funds.

4.0 Opportunity for DBEs to Participate. Each contractor, subcontractor and supplier working on a contract funded in whole or in part with federal funds shall take all necessary and reasonable steps to ensure that DBEs have an opportunity to compete for and participate in performance on project contracts and subcontracts in which a DBE goal is established.

5.0 Required Contract Provision. The federal-aid contract will include the following provision, as mandated by USDOT at Title 49 CFR 26.13(b):

(a) The contractor, sub-recipient or subcontractor shall not discriminate based on race, color, religion, national origin, or gender in the performance of the contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of the contract, which may result in the termination of the contract or such other remedy, as the recipient deems appropriate.

In this provision, "contractor" will be defined as the contractor on the contract; sub-contractor, or material supplier performing the work on or for the project. For the purposes of any federal-aid contract awarded by the Commission, "the recipient" will be defined as either the Commission, or MoDOT, or both. The contractor shall include this same contract provision in every supply contract or subcontract the contractor makes or executes.

6.0 DBE Program Information. DBE Program information may be obtained from the MoDOT External Civil Rights Division, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Phone (573) 751-7801, Fax (573) 526-0558, E-Mail: dbe@modot.mo.gov. It will be the duty of each contractor, and for the contractor's subcontractors to take the steps necessary to determine the legal obligations and limitations under the DBE Program, as an element of responsibility. It will be the duty of each certified DBE firm to know, understand and comply with the DBE firm's legal obligations and limitations under the DBE Program, as a requirement of program participation.

7.0 DBE Certification, and the Missouri Unified Certification Program. MoDOT and other certifying agencies within Missouri have partnered to form the Missouri Regional Certification Committee (MRCC) and have developed a Unified Certification Program (UCP) pursuant to 49 CFR 26.81 and 7 CSR 10-8.061. Only DBE firms certified by the MRCC are eligible to perform work on a federal-aid contract for DBE contract goal credit. It is the contractor's responsibility to ensure firms identified for participation are approved certified DBE firms. The MRCC DBE Directory can be found at the following link: https://www.modot.org/welcome-external-civil-rights.

8.0 DBE Program-Related Certifications Made by Bidders and Contractors. By submitting a bid on any call involving USDOT federal funded participation, and by entering into any contract on the basis of that bid, the contractor makes each of the following DBE Program-related certifications and assurances to USDOT, to the Commission, and to MoDOT:

(a) The bidder certifies that management and bidding officers have reviewed and understand the bidding and project construction and administration obligations of the USDOT DBE Program regulations at Title 49 CFR Part 26 (as amended), and the Commission's DBE Program rules at Title 7 CSR Division 10, Chapter 8 (as amended).

(b)The bidder agrees to ensure that certified DBE firms have a full and fair opportunity to participate in the performance of the contract funded in whole or in part with federal funds. The bidder certifies that all necessary and reasonable steps were taken to ensure that DBE firms have an opportunity to compete for and perform work on the contract. The bidder further certifies that the bidder not discriminate on the basis of race, color, age, national origin, religion or gender in the performance of the contract, or in the award of any subcontract.

(c) The bidder certifies that if awarded the federal-aid contract, the contractor will make a good faith effort to utilize the certified DBE firms committed to with the awarded contract.

(d) The bidder certifies, that if awarded the federal-aid contract with less than the original DBE contract goal proposed by the Commission in the bid documents, as a result of an approved good faith effort, the revised lower amount shall become the final DBE goal, and that goal will be used to determine any liquidated damages to be assessed at the completion of the project.

(e) The bidder understands and agrees that if awarded the contract the contractor is legally responsible to ensure that the contractor and each DBE, comply fully with all regulatory and contractual requirements of the USDOT DBE Program, and that each DBE firm participating in the contract fully perform the designated tasks, with the DBE's own forces and equipment, under the DBE's own direct supervision and management. The bidder certifies, that if awarded the contract and if MoDOT or the Commission determine that the contractor, a DBE or any other firm retained by the contractor has failed to comply with the DBE Program requirements or federal or state DBE Program regulations, the Commission, through MoDOT, shall have the sole authority and discretion to determine the extent of the monetary value to which the DBE contract goals have not been met at the project completion, and to assess against and withhold monetary damages from the contractor up to the full amount of that breach. The bidder further understands and agrees that this clause authorizes the Commission, through MoDOT, to determine and fix the extent of the damages caused by a breach of any contractual or regulatory DBE Program requirement and that the damage assessment will be enforced in addition to, and not in lieu of, any other general liquidated damages clause in the contract. By submitting a bid for a federal-aid contract, and by entering into a contract, the bidder irrevocably agrees to such an assessment of liquidated damages for DBE Program purposes, and authorizes the Commission and MoDOT to make such an assessment of liquidated damages against the contractor, and to collect that assessment from any sums due the contractor under the contract, or any other contract, or by other legal process. The bidder makes this certification, agreement and authorization on behalf of itself, for each federal-aid contract.

9.0 Designation of DBE firms to perform on contract. The bidder states and certifies that the DBE participation information submitted in the bid or within the contract designated time is true, correct and complete and that the information provided includes the names of all DBE firms that will participate in the contract, the specific line item (s) that each DBE firm will perform or partially perform, and the creditable dollar amounts of the participation of each DBE. The specific line item must reference the MoDOT line number and item number contained in the proposal. The bidder further states and certifies that the bidder has committed to use each DBE firm listed for the work shown to meet the DBE contract goal and that each DBE firm listed has clearly confirmed to the bidder that the DBE firm will participate in and perform the work, with the DBE's own forces.

(a)The bidder certifies the bidder's understanding that as the contractor on a contract funded in whole or in part by USDOT federal funds, the bidder may not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract, in whole or in any part, with another DBE, any non-DBE firm or with the contractor's own forces or those of an affiliate, without the prior written consent of MoDOT. The bidder understands it must receive approval in writing from MoDOT for the termination of a DBE firm, or the substitution or replacement of a DBE before any substitute or replacement firm may begin work on the project in lieu of the DBE firm participation information listed in the executed contract.

(1) The bidder further certifies understanding, that if a DBE firm listed in the bid or approved in the executed contract documents ceases to be a certified DBE firm, at any time during the performance of the contract work, and a contract or subcontract with that firm has not yet been executed by the prime and subcontractor, the contractor cannot count any work performed by that firm after the date of the firm's loss of eligibility toward meeting the DBE contract goal. The contractor can pursue efforts to replace the work planned with the decertified firm, with other certified DBEs, in coordination with MoDOT's External Civil Rights Division. However, if the contractor has executed a subcontract with the firm before the DBE lost eligibility and ceased to be a certified DBE, the contractor may continue to receive credit toward the DBE contract goal for that firm's work.

(2) The bidder further certifies the bidder's understanding, that the dollar value of any work completed by a DBE firm prior to approval of the DBE's substitution or replacement, in writing, by MoDOT may not be credited toward meeting the DBE contract goal. No credit toward the DBE goal will be given for any amount withheld from payment to the DBE or "back charged" against monies owed to the DBE, regardless of the purpose or asserted debt.

10.0 Contract Goal Submittal. The bidder may submit the completed "DBE Identification Submittal" information in the bid documents at the same time as, and within the sealed bid, at the time the bid is submitted. However, if that information is not completed and submitted with the initial sealed bid, then as a matter of responsiveness and responsibility, all bidders shall file the completed "DBE Identification Submittal" pages with MoDOT on or before 4:00 p.m. of the third business day after the bid opening date, directly to the External Civil Rights Division, Missouri Department of Transportation, 105 W. Capitol Avenue, P.O. Box 270, Jefferson City, Missouri 65102-0270. Submission via email and telefax transmittal to MoDOT will be permitted.

Fax no. (573) 526-0558
Email: DBE@MoDOT.Mo.Gov

No extension of time will be allowed for any reason. The means of transmittal and the risk of timely receipt of the information shall be the bidders.

10.1 Good Faith Effort Submittal. If the bidder is not able to meet the Commission's DBE contract goal, the bidder has the opportunity to submit with and as a part of the bid, a true, accurate, complete and detailed written explanation of good faith efforts taken to meet the DBE Contract Goal established in the bid documents. The bidder shall use the "DBE Identification Submittal" sheets for any DBE participation that will be committed towards the goal and an explanation, with any supporting documentation, for the inability to meet the full goal established on the contract. Any Good Faith efforts shall be submitted as part of the bid or within the three business days after the bid opening.

10.2 Bidders Good Faith Efforts Described. MoDOT will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made based upon 49 CFR Appendix A to Part 26 and the following additional efforts:

(a) Providing documentation on any and all past GFE activities for review.

(b) Past project DBE performance utilization.

(c) Race neutral methods utilized on completed projects.

All good faith efforts are evaluated on a case-by-case basis whereas any of the numerous good faith elements listed individually or collectively is not a guarantee of approval.

10.3 Administrative Reconsideration of the Bidder's Good Faith Efforts Made as a Part of the Bid Submittal. If MoDOT determines that the apparent low bidder has failed to adequately document in the bid that the bidder made a good faith effort to achieve sufficient DBE participation in the contract work, that firm will be offered the opportunity for administrative reconsideration upon written request, before MoDOT and the Commission reject that bid as non-responsive.

10.4 Forfeiture of Bid Bond possible when: The failure of the apparent low bidder to file the completed and executed "DBE Identification Submittal", listing actual, committed DBE participation equal to or greater than the DBE contract goal percentage specified in the bid, or complete good faith effort participation by 4:00 p.m. on the third business day after the bid opening, will be cause for rejection of that bid. In addition, the bid surety bond or bid guaranty of the apparent low bidder will be forfeited to and become the property of the Commission upon Commission demand, only if the contract is awarded.

(a) By submitting a bid on a federal-aid project, the bidder accepts and agrees to these provisions, and the disposition of the bidders bid bond or guaranty, upon demand by the Commission.

11.0 DBE Participation for Contract Goal Credit. In addition to participation outlined by 49 CFR part 26, the following shall apply:

(a) In addition to allowances provided for in the Federal Regulations, a bidder may count toward the DBE contract goal the following expenditures to certified DBE firms that are not "regular dealers" or "manufacturers" for DBE program purposes:

(1) A bidder may count toward the DBE contract goal 100 percent of the fees paid to a certified DBE trucker or hauler for delivery of material and supplies required on a job site, but not for the cost of those materials or supplies themselves, or for the removal or relocation of excess material from or at the job site, when the DBE certified trucking company is not also the manufacturer of or a regular dealer in those material and supplies, provided that the trucking or hauling fee is determined by MoDOT to be reasonable as compared with fees customarily charged by non-DBE firms for similar services. The certified DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass through for the purposes of gaining credit toward the contract DBE goal. Prior to submitting a bid, the bidder shall determine, whether a DBE trucking firm will meet the criteria for performing a CUF on the project.

(2)The bidder will receive DBE contract goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases or other project work or service arrangements, provided that those fees are determined by MoDOT to be reasonable and not excessive, as compared with fees customarily charged by non-DBE firms for similar services. A broker will be defined as a person or firm that does not own or operate the delivery equipment necessary to transport materials, supplies or equipment to or from a job site. In most instances, the broker is merely the entity making arrangements for delivery

of material, supplies, equipment, or arranging project services. To receive DBE contract goal credit, MoDOT must determine that the DBE broker has performed a CUF in providing the contract work or service.

12.0 DBE Required to Perform a Commercially Useful Function (CUF). The DBE CUF requirements are stated in 49 CFR Part 26, (26.55). Any questions or further information needed for CUF determinations should be directed to MoDOT's External Civil Rights Division.

12.1 Quality Control (QC) and Quality Assurance (QA) Reviews. The prime contractor shall monitor their planned DBE project usage for CUF compliance and provide MoDOT information for areas of concern for further evaluation. MoDOT will perform a QA review, or compliance review, for DBE CUF and project documentation retained by the contractor through project completion. The contractor shall maintain all DBE related information it has received, documented and provided to MoDOT for a period of three years beyond the date of final inspection. MoDOT's determination that a DBE's participation may not count toward the project goal, or good faith effort level approved will be subject to administrative reconsideration.

12.2 MoDOT Makes Final Determination on Whether a CUF Is Performed. MoDOT will have the final authority to determine whether a DBE firm has performed a CUF on a federal-aid contract.

13.0 Verification of DBE Participation at project completion. (Assessment of Liquidated Damages Possible)

13.1 Final Payment from the Commission. Prior to final payment by the Commission, the contractor shall file with the Commission a detailed list showing each DBE used on the contract work, and the work performed by each DBE (Section 105.15.2.1). The list shall show the actual dollar amount paid to each DBE for the creditable work on the contract, less any rebates, kickbacks, deductions, withholdings or other repayments made. The list shall be certified under penalty of perjury, or other law, to be accurate and complete. MoDOT and the Commission will use this certification and other information available to determine if the contractor and the contractor's DBEs satisfied the DBE contract goal percentage specified in the contract and the extent to which the DBEs were fully paid for that work. The contractor shall acknowledge, by the act of filing the detailed list, that the information is supplied to obtain payment regarding a federal participation contract.

13.2 Failure on the part of the contractor to achieve the DBE participation to which the contractor committed in the contract may result in liquidated damages being imposed on the contractor by the Commission for breach of contract and for non-compliance. If the contract was awarded with less than the original DBE contract goal proposed by the Commission, the revised lower amount became the final DBE contract goal, and that goal will be used to determine any liquidated damages to be assessed. Additionally, the Commission or MoDOT may impose any other administrative sanctions or remedies available at law or provided by the contract in the event of breach by the contractor by failing to satisfy the contractor's DBE contract goal commitment. The contractor will be offered the opportunity for administrative reconsideration of any assessment of liquidated damages determined at the project completion, upon written request. The administrative reconsideration officer may consider all facts presented, including the legitimacy or business reason for back charges assessed against a DBE firm, in determining the final amount of liquidated damages.

14.0 Miscellaneous DBE Program Requirements. In accordance with Title 49 CFR Part 26 and the Commission's DBE Program rules in Title 7 CSR Division 10, Chapter 8, the contractor, for both the contractor and for the contractor's subcontractors and suppliers, whether DBE firms or not, shall commit to comply fully with the auditing, record keeping, confidentiality, cooperation and anti-intimidation or retaliation provisions contained in those federal and state DBE Program regulations. By bidding on a federal-aid contract, and by accepting and executing that contract, the contractor agrees to assume these contractual obligations, and to bind the contractor's subcontractors contractually, at the contractor's expense.

15.0 Data Collection from Bidders for DBE and Non-DBE Subcontractors, Suppliers, Manufacturers and/or Brokering used and not used in bids during the reporting period. MoDOT is a recipient of federal funds and is required by 49 CFR 26.11, to provide data about its DBE program. The information shall consist of all subcontractor quoting received for actual use and of consideration by the prime bidder. MoDOT will be requesting this information from bidding prime contractors and will provide prime bidders a form to submit the data by the last day of each month for the current letting. The information shall only include the names of both DBE and non-DBE companies that the prime bidders received quotes. MoDOT will then contact the DBEs and non-DBE subcontractors and request additional information from DBE and non-DBE subcontractors including current year of gross receipts and number of years in business. The information provided by the prime bidders shall not include any bid quote pricing regardless if it was used or not. This information will aid MoDOT in the determination of the availability of DBEs and will be used in subsequent availability studies.