



# Agenda Bill

City Council Regular Meeting - 05 Feb 2024

---

**Department**

Public Works

**Staff Contact**

Robin Tischmak, Deputy Public Works Director

---

**Agenda Placement**

Business Agenda

---

**Agenda Bill Title**

Briefing of SR 509 Project and Presentation of Memorandum of Understanding (MOU) with Washington State Department of Transportation (WSDOT)

---

**Summary**

The Washington State Department of Transportation (WSDOT) is in the process of extending SR 509 from S 188th St to I-5. The work is being completed in two stages. Stage 1 includes the segment from 24th Ave S to I-5 in SeaTac and is currently under construction. Stage 2 extends from S 188th St to 24th Ave S and includes portions within Burien's corporate boundary; this phase is currently under design. Stage 2 includes construction of a shared use path and two roundabouts on S 160th St. It also includes two short segments of noise wall adjacent to the northbound and southbound on-ramps. The attached Memorandum of Understanding (MOU) establishes each party's responsibilities with regard to design standards, costs, construction, and issue resolution.

---

**Options**

1. Authorize the City Manager to sign the Memorandum of Understanding with WSDOT for the 509 Project substantially in the form as attached, and authorize the City Manager, or the City Manager's designee, to execute any related agreements, renewals, or similar documents related to this agreement.
  2. Do not authorize the City Manager to sign the MOU and provide alternative direction.
- 

**Administrative Recommendation**

Staff recommends Option 1.

---

**Suggested Motion**

Move to place this item on the Consent Agenda of the next Regular Meeting.

---

**Fiscal Impact**

Costs associated with the proposed design and its construction are WSDOT's responsibility; costs for any changes proposed by Burien, other than those necessary to comply with current design standards are Burien's responsibility.

---

**Attachments**

[Draft MOU - Burien and WSDOT](#)

---

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
Washington State Department of Transportation  
AND  
City of Burien**

This Memorandum Of Understanding (MOU) is an agreement between the City of Burien (Burien) and the Washington State Department of Transportation (WSDOT), hereafter known as the "Party" or collectively as the "Parties."

**1. BACKGROUND**

WSDOT is a state agency authorized to plan, design, construct, operate, and maintain highways in Washington.

Burien is a non-charter code city incorporated under RCW Chapter 35A.13 authorized to plan, design, construct, operate, and maintain streets and alleys within its corporate boundaries in the State of Washington.

WSDOT is planning to construct *SR 509/24<sup>th</sup> Avenue South to South 188<sup>th</sup> Street - New Expressway Project* ("Project"), also known as the *SR 509 Completion Project Stage 2*, and portions thereof lie within Burien's corporate boundary (Exhibit A). Burien has certain design requirements or requests to be incorporated into the project's construction, shared use path, roundabout (RAB) finishes, South 160th Street forward compatibility, and local road closure allowances.

In instances where the WSDOT Project conflicts with any Burien street utility facilities (Facilities), WSDOT may not expend motor vehicle funds for any relocation, modification, or removal (hereinafter collectively "Relocation") of the Facilities in conflict with the Project, unless those Facilities occupy the public right-of-way ("ROW") or public fee property pursuant to a compensable property interest (hereinafter collectively "Easement"). The utility owner will be responsible for Relocation costs of Facilities without an Easement right.

The Maintenance Responsibility of active streets within WSDOT ROW will follow guidelines stated in RCW 47.24.020 and WSDOT Maintenance Manual M 51-01.11 Appendix A.

**2. BASIS OF UNDERSTANDING**

**2.1 Project Development and Coordination**

Jurisdiction. The terms and commitments herein to meet the mutually agreeable requirements of Burien apply only to facilities within those public street ROW areas outside the WSDOT ROW turnback limits and facilities within existing streets crossing WSDOT ROW to remain in service. WSDOT ROW limits are those recorded on the current approved ROW Plans. WSDOT will coordinate and support Burien to identify the extent of their corporate boundary legal descriptions tied to WSDOT ROW that have changed due to the new WSDOT ROW limits, including survey descriptions, map exhibits, and draft ordinance document review comments. Burien will draft and execute the required ordinance document(s) to adopt the new boundary, including coordinating and facilitating joint resolutions/ordinances with the abutting cities that share the same boundary change, as required.

WSDOT shall allow Burien inspectors access to the Project construction site to inspect any Burien permitted work involving Burien-owned property, ROW or utilities, or property

to be transferred to and/or maintained by Burien after construction, at reasonable times and with the prior consent of WSDOT upon 48 hours prior written notice to the WSDOT project engineer. WSDOT acknowledges that compliance inspections for Burien permits will be charged to WSDOT's Design-Builder.

Review and Coordination. During the design phase (Request for Proposal, "RFP" preparation) of this Project, WSDOT and Burien will identify the extent of the design elements and improvements within Burien. WSDOT will provide Burien with Project design plans as early as possible, and will schedule and meet with Burien to review, to the extent knowable by WSDOT during Project development, the ROW, and environmental requirements, facilities design, traffic maintenance, haul routes, potential pavement mitigation, and construction scheduling to ensure Burien has opportunities to comment. The Parties will thereafter work cooperatively to concur with and incorporate the desired design elements, standards, aesthetics, material/finishes, and improvements, and the timing and process to establish any property commitments or permits as required under

Construction Approach. Burien acknowledges its obligation to plan for and participate in each of the Project's Preliminary and Final Design plan reviews and comment resolutions and task force meetings related to work on Burien-owned ROW or property prior to the construction plan Release for Construction (RFC), at Burien's cost. Permit application documents that include plans can be submitted to Burien using Final Design drawings, with the intent that the permit is issued and will include the RFC drawings. WSDOT acknowledges that fees/costs for review of Burien permit application documents and issuance of Burien permits will be charged to WSDOT's Design-Builder. Burien will participate in the Preconstruction meetings to coordinate and resolve any outstanding issues prior to beginning construction. Burien acknowledges that WSDOT is the owner representative in the contract with the Design-Builder and WSDOT will act on behalf of Burien to ensure that the work is performed in accordance with the contract, which includes the Burien Municipal Code and adopted Burien standards.

Review submittals to and from either Party will be transmitted prior to 12:00 pm on the due date day.

Environmental Approach. Wetland Buffer impacts to Wetland 24.63 may be mitigated for at Barnes Creek mitigation site. Wetland impacts may be mitigated for at the AMB advance mitigation site. Wetland impact limits are determined as follows:

Permanent Impacts:

- To the Cut and Fill grading lines
- To the Drip line of the bridge
- 3 feet outside of the Fill wall

Temporary Impacts

- 5 feet beyond the Cut grading lines
- 20 feet beyond the Fill grading lines
- 5 feet beyond the Drip line of the bridge
- For Fill Walls: 5 feet beyond the 3 feet permanent impact line

As outlined and approved in the SR 509: Corridor Completion/I-5/South Access Road Environmental Impact Statement (EIS) dated 2003 the permanent termination of South 194<sup>th</sup> Street at the new SR 509 Expressway includes mitigation. Measures include, but are not limited to the following:

- Provide Wayfinding signs to be installed on 8<sup>th</sup> Avenue S. to advise use of S.



- 192<sup>nd</sup> Street for Des Moines Memorial Drive (DMMD) south access.
- Construct the Lake to Sound Trail Segment C.
- Complete the South. 192<sup>nd</sup> Street bridge work and open a new street crossing prior to closing South. 194<sup>th</sup> Street to DMMD

Construction Approach. WSDOT will construct the Project to meet the mutually agreeable requirements of Burien. WSDOT will include applicable sections from the Burien Municipal Code, adopted Burien standards and Burien policies in the WSDOT construction contract documents for Stage 2 as Mandatory Standards for all work done on Burien ROW and property.

If Burien wants any item of work constructed to deviate from what is required by Burien’s Municipal Code and adopted Burien standards and policies published at the time the RFP is advertised, Burien must inform WSDOT in writing at least thirty (30) days prior to the due date for Proposals. Otherwise, any unjustified change Burien requests after the Proposals due date will be funded solely by Burien if such change increases the cost of the Project. See Section 3.0 below. However, changes requested by Burien after the Proposals due date that are necessary to bring the work in compliance with applicable sections of the Burien Municipal Code and adopted Burien standards and policies included in the advertised RFP, shall be funded by WSDOT.

The following design speeds will be used as the basis of the design:

- South. 160<sup>th</sup> Street – 35 MPH, 15 MPH at the RABs
- 5<sup>th</sup> Place South. – 25 MPH

The desired design elements identified below are based on WSDOT’s conceptual design. Some of these commitments may become null and void based on the final design of the selected Design-Builder:

- a) Streetscape work within Project limits. Construct hot mix asphalt (HMA) traveled way, per WSDOT standards. Construct concrete curb and gutter, and 6-foot wide sidewalks per WSDOT Standard Plans, except where noted herein for South. 160<sup>th</sup> Street.

Construct RABs on S. 160th Street with stamped concrete finish medians and truck aprons and mountable curbing. Color will be Federal Standard 595 Color No. 31136.

Construct a new 10-foot wide HMA shared-use path on the north side of South 160<sup>th</sup> Street within the SR 509 interchange between SR 509 southbound off-ramp and 5<sup>th</sup> Place South Beyond the aforementioned point, construct short sections of 6-foot wide sidewalk connecting to the existing sidewalks east and of west of the interchange. Shared-use path will be designed for loading to accommodate maintenance vehicles and maintenance construction equipment. Street lighting will also be installed along the street on the outside of the shared-use path. Pedestrian scale lighting will not be provided for the shared-use path.

Construct a new 6-foot wide concrete sidewalk on the south side of South 160<sup>th</sup> Street (excluding the segment on the existing bridge) from the existing sidewalk just east of the Ambaum Cut Off South. intersection ending at the first private property driveway on the east of the interchange.

- b) Use WSDOT standard Methyl Methacrylate (MMA) pavement markings for

permanent striping and 3M brand taped pavement markings for temporary striping. Non-standard decorative, signature or gateway features may be constructed upon concurrence and in accordance with the terms of betterments in Section 3.0.

- c) Structure finish and trim. Comply with requirements set forth in the SR 509 Completion Project Phase 1 Urban Design Criteria (Exhibit B) attached hereto and made a part of this MOU.
- d) Illumination and Signalization work within Project limits. Replace existing mast arm lighting attached to PSE poles being relocated, in kind. Lighting fixtures under deck on WSDOT bridge structures/abutments will be installed in accordance with WSDOT structure mounting requirements and will be owned, operated, and maintained by Burien. Retain or/restore in place the existing South 160<sup>th</sup> Street traffic signals at Ambaum Cut Off South intersection, and the existing DMMD traffic signals at 8th Avenue South Rapid Flashing Beacons will be installed for all marked pedestrian crossings at the western RAB.
- e) Signing work within Project limits. Replace existing street signs that are disturbed or do not meet WSDOT standards. Protect existing Lake to Sound Trail wayfinding sign or/marker assemblages or remove and restore if disturbed. Provide new street signage needed for the safe operation of the RABs. Signs will be ground post mounted per WSDOT standard drawings. Sign bridges, cantilevers, or bridge mounts requested by Burien instead of ground post mounting will be considered a betterment and paid for by Burien per Section 3.0 upon approval. New roadway signs requested by Burien that did not exist prior to the Project that are not required by the published design standards or this MOU will be considered a betterment and paid for by Burien per Section 3.0 upon approval.
- f) Utility relocation work within Project limits. Existing utilities within the street ROW are there by franchise rights (defined by WSDOT as "Type 1" where referenced in contracts), and any conflicting facilities shall be relocated at the owner's cost. In the event a Type 1 utility owner will not relocate at their cost any portion of their facilities that are in conflict with the Project, and Burien is unable to enforce the franchise, the street improvements requested or required by Burien that are dependent on the relocation may be removed from the Project by mutual agreement and will become Burien's responsibility to construct.
- g) Forward compatibility. Street improvement projects planned by Burien beyond the WSDOT ROW may be added to the Project by mutually executed agreement and will be Burien's cost responsibility.
- h) Noise wall work within Project Limits. WSDOT will construct new noise walls in compliance with the noise study dated December, 2021.

Property Rights and Permitting. For the purpose of reducing duplicative procedures where street ROW is concerned, in instances where the Parties agree the public-ROW is under permanent WSDOT control (inside Turnback line), Burien will not be required to issue permits for the Project work. In instances where the Parties agree the public ROW is outside of WSDOT ROW control (outside Turnback line), Burien will issue WSDOT and their Design-Builder a Street ROW Use Permit for the Project work. Burien grants WSDOT and their Design-Builder the right to construct all the improvements in the existing Burien ROW and acknowledges that WSDOT requires a Contract Bond for the full Proposal amount from the Design-Builder that includes

permit related costs. In alignment with the WSDOT Contract, the Design-Builder shall obtain all required permits and licenses that have not been obtained by WSDOT for the project work within Burien ROW.

Use of street ROW along South 160<sup>th</sup> Street, Ambaum Cutoff South, DMMD, 8<sup>th</sup> Avenue South, 5<sup>th</sup> Place South, and 11<sup>th</sup> Place South will be turned back to Burien shortly after Project completion.

Portions of existing corporate boundary lines defined by the WSDOT ROW line will be revised by the Burien ordinance to follow the new ROW line locations as revised by the Project.

Street Closure limits and allowances. WSDOT will coordinate the Maintenance of Traffic (MOT) conditions with Burien prior to and during construction. Currently anticipated and planned traffic restrictions include the following, which are subject to change based on the final design of the selected Design Builder:

- a) South 192<sup>nd</sup> Street will be closed across the SR 509 ROW for up to 9 months during the new bridge construction. For the duration of such closure, DMMD and S. 194<sup>th</sup> Street will remain open during this period. Night and/or weekend restrictions may occur during the period.
- b) DMMD and South 160<sup>th</sup> Street access to abutting properties will be maintained 24/7 with flagging stations as needed.
- c) South 188<sup>th</sup> Street, DMMD, and South 160<sup>th</sup> Street will be restricted or closed short term periodically with flagging stations as needed for RAB construction. Additional Maintenance of Traffic strategies that may be necessary during construction will be coordinated with Burien.
- d) Detour routing may utilize portions of 8th Avenue South for closures of South 192nd Street and South. 194<sup>th</sup> Street.

The provisions in FHWA-1273 (Exhibit C) attached hereto and made a part of this MOU will apply to all work on this Project.

**3. Payments and Costs.** Burien acknowledges that requests for change(s) to the WSDOT construction contract, other than changes that are necessary to bring the design in compliance with applicable sections of the Burien Municipal Code and adopted Burien standards and policies, may increase costs for Burien and that WSDOT will not implement any such change(s) unless Burien agrees in advance in writing to be solely responsible for the costs associated with such change.. WSDOT acknowledges that Burien shall not be responsible for increased costs for any design changes requested by Burien that are necessary to bring the design or the work in compliance with applicable sections of the Burien Municipal Code and adopted Burien standards as of the Project RFP issue date.

Betterment. Notwithstanding the foregoing, if Burien desires to include a betterment in the above design elements work at any specific location, WSDOT will allow for betterment work to be performed, provided the Parties can reasonably coordinate the Project schedule to accommodate the betterment work without increasing Project costs or delaying the Project. Betterment is defined as any significant deviation or upgrading of the design contemplated during the implementation of the Project that is not attributable to the highway construction or

to meeting current requirements or standards and is made solely for the benefit of and at the election of Burien. The difference in cost between the minimum construction required as a result of the Project and Burien's desired betterment shall be at Burien's sole expense and the additional funds authorized by a separate agreement. The estimated cost of betterments to be paid by the Burien will be fully loaded, including but not limited to Design-Builder's change order markup, sales tax, WSDOT construction engineering management labor, and WSDOT regional overhead markup.

Indemnification. WSDOT shall defend, indemnify and hold Burien, its agents, counsel, directors, employees, officers, officials (appointed or elected), and representatives, harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, court costs, and expenses, to the extent caused by WSDOT's acts, errors or omissions in the performance of this Agreement, except for injuries and damages caused by Burien's sole negligence.

Entire Agreement. This Agreement is the entire agreement between the Parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the Parties. Either party may request changes in the agreement. Proposed changes that the Parties mutually agree upon shall be incorporated by written amendments to this Agreement.

#### **4. Designated Representatives and Notice**

- (a) Burien's Designated Representative for this MOU is Burien Deputy Public Works Director
- (b) WSDOT's Designated Representative for this MOU is Project Engineer.
- (c) Changes to Designated Representative shall be made by notice pursuant to Notice.
- (d) Notice. Unless otherwise provided herein, all notices, communications and deliveries required or permitted under this Agreement shall be in writing and shall be (a) delivered personally, (b) sent by overnight commercial air courier (such as Federal Express), or (c) mailed, postage prepaid, certified or registered mail, return receipt requested; to the parties at the addresses hereinafter set forth:

##### **Burien**

Robin Tischmak – Deputy Public Works Director  
400 SW 152nd St, Suite 300  
Burien, WA 98166

##### **WSDOT**

Ward Anderson - Project Engineer  
ChepelA@Wsdot.wa.gov  
SR 509 Completion Project  
18000 International Blvd., Suite 900  
SeaTac, WA 9810488

**5. Endorsement**

IN WITNESS WHEREOF, the undersigned Parties have executed this MOU as of the last date written.

| <b>City of Burien</b>         | <b>Washington State<br/>Department of Transportation</b> |
|-------------------------------|--|
| By:                           | By:  |
| Printed: Adolfo Bailon        | Printed: John H. White                                   |
| Title: City of Burien Manager | Title: Gateway Program Administrator                     |
| Date:                         | Date:  |

# Exhibit A-1

## SR 509 Stage 2 Project Description

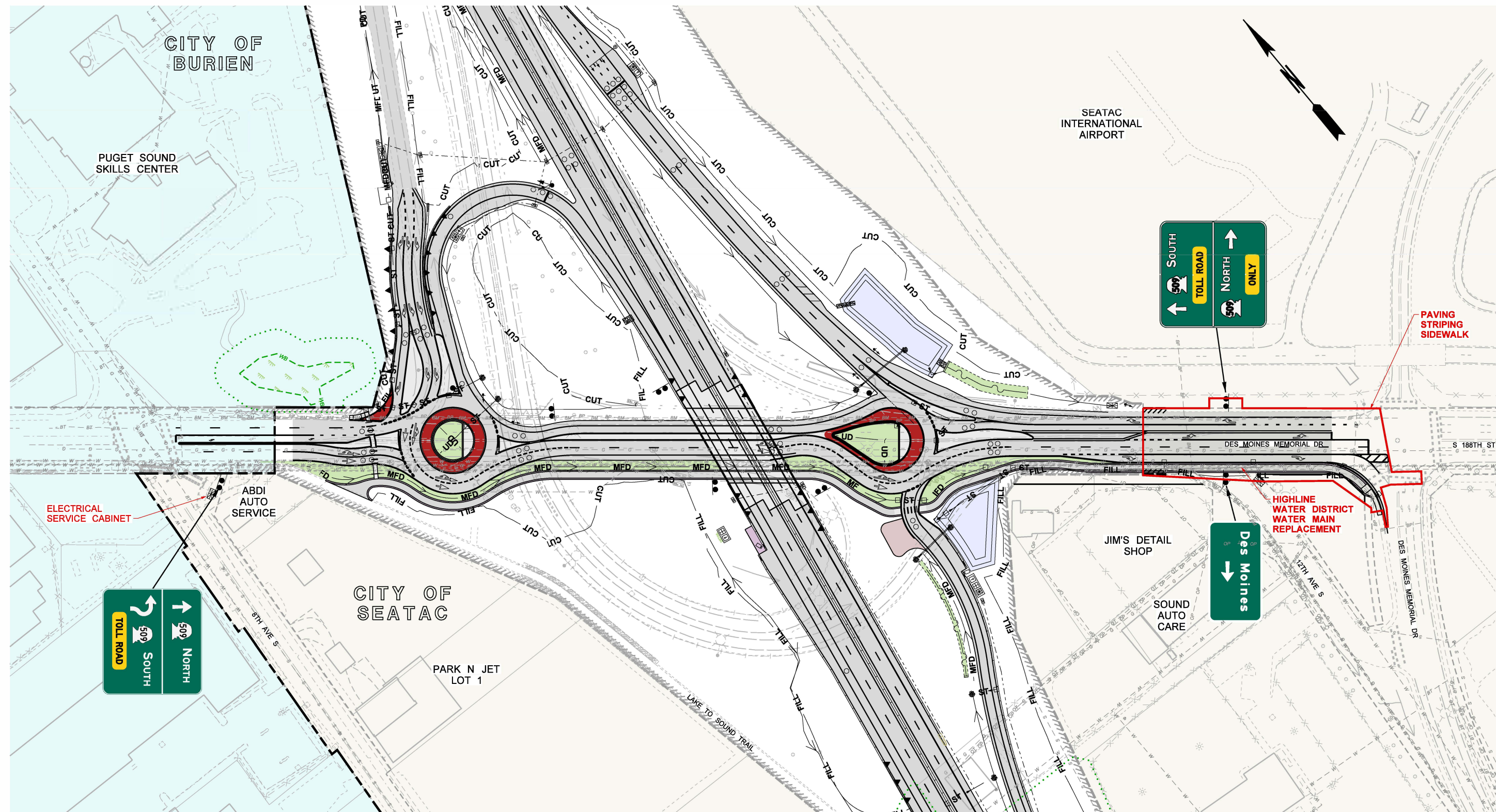


The SR 509, 24th Avenue South to South 188th Street–New Expressway Project includes constructing:

- A new four-lane expressway between 24th Avenue South and South 188th Street/Des Moines Memorial Drive
- Reconfigured SR 509 interchanges at South 160th Street and South 188th Street/Des Moines Memorial Drive
- Five new bridges
- New southbound auxiliary lane on I-5 between the SR 516 interchange and South 272nd Street
- Two new noise walls near South 160th Street and extension of one existing noise wall alongside I-5
- Retaining walls to minimize impacts to nearby wetlands and stream buffers
- Wetland preservation enhancement and environmental rehabilitation activities at Barnes Creek and within the SR 509 corridor.



Exhibit A-2



Page 11 of 45

DATE: 9/18/2023  
FILE NAME: c:\users\haupte\pw\_wsdot\044694\SR509\_Stg2\_188-BurienSeatac.dgn  
MODEL NAME: \$MODELNAME\$

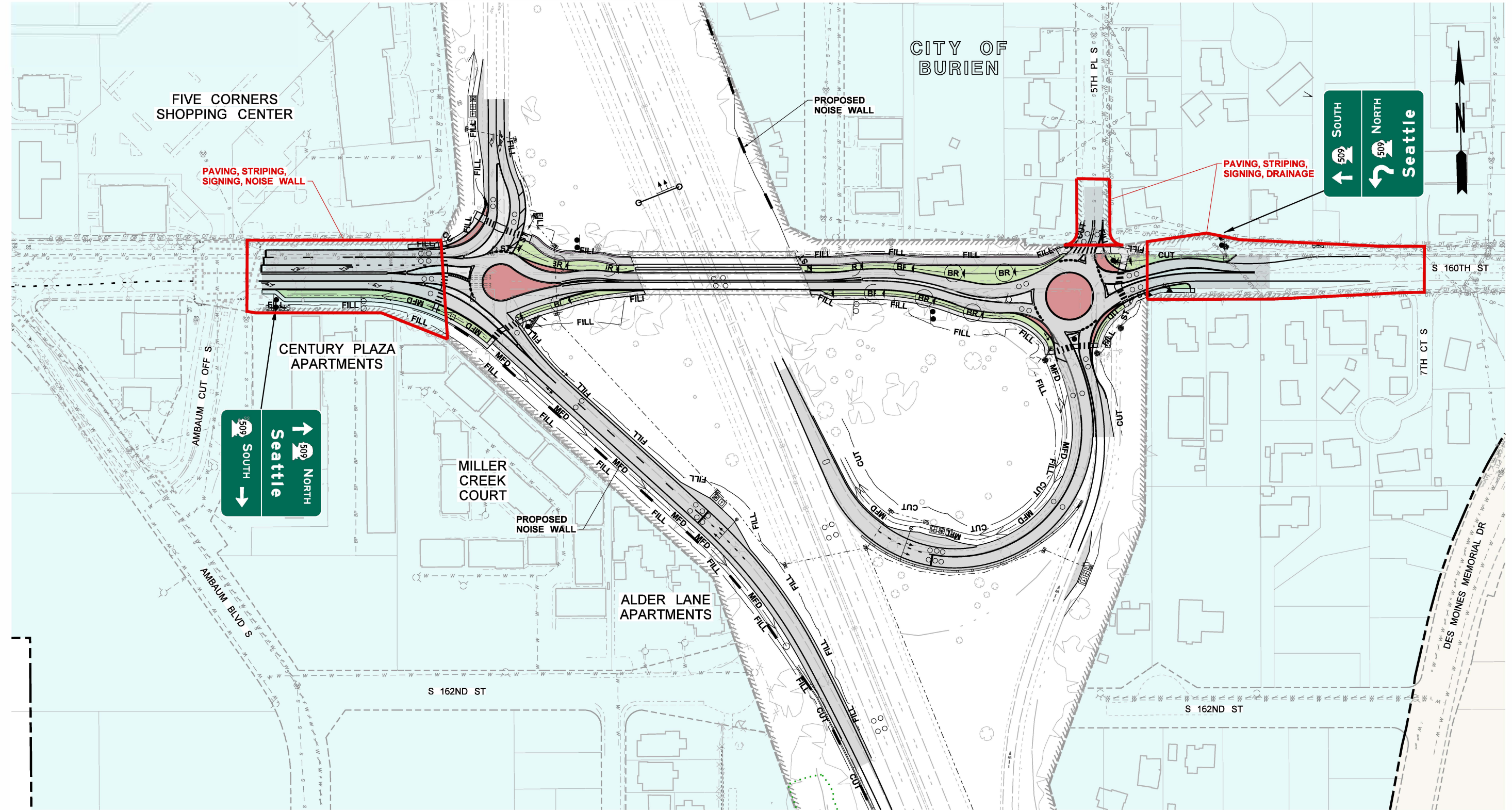
CITIES OF BURIEN & SEATAC  
S 188TH ST I/C

Puget Sound  
**GATEWAY** Program

SR 509/24TH AVE S TO S 188TH ST  
NEW EXPRESSWAY PROJECT  
STAGE 2 WORK WITHIN CITY LIMITS



Exhibit A-3



CITY OF BURIEN  
S 160TH ST I/C

Puget Sound  
**GATEWAY** Program



SR 509/24TH AVE S TO S 188TH ST  
NEW EXPRESSWAY PROJECT  
STAGE 2 WORK WITHIN CITY LIMITS



## **Exhibit B**

# **SR 509 COMPLETION PROJECT PHASE 1**

Urban Design Criteria

September 15, 2023

## Contents

|   |    |
|---|----|
| Purposes and Objectives .....                             | 2  |
| Retaining Walls and Noise Walls .....                     | 2  |
| Criteria.....   | 2  |
| Wall Alignment .....                                      | 2  |
| Top of Wall Profile .....                                 | 3  |
| Wall Batter .....   | 3  |
| Bridges .....   | 3  |
| Criteria.....   | 3  |
| Superstructure .....                                      | 3  |
| Piers .....   | 4  |
| Abutments and Wing Walls .....                            | 4  |
| Safety Barriers .....                                     | 4  |
| Criteria.....   | 4  |
| Roadside Barriers .....                                   | 4  |
| Barriers on Structures .....                              | 4  |
| Sign Structures and Toll Gantries .....                   | 5  |
| Criteria.....   | 5  |
| Right-Of-Way Fencing and Fall Protection Aesthetics ..... | 5  |
| Criteria.....   | 5  |
| Right-of-Way Fencing .....                                | 5  |
| Fall Protection.....                                      | 5  |
| Fall Protection Exposed to Public View .....              | 6  |
| Surface Texture Aesthetics.....                           | 6  |
| Criteria.....   | 6  |
| Color Aesthetics .....                                    | 7  |
| Criteria.....   | 7  |
| Lighting Aesthetics .....                                 | 9  |
| Criteria.....   | 9  |
| Intelligent Transportation Systems .....                  | 9  |
| Criteria.....   | 9  |
| WSDOT Drainage and Utilities .....                        | 9  |
| Criteria.....   | 9  |
| Vegetation.....   | 10 |
| Criteria.....   | 10 |

General.....10  
 Roadside Cut Slope Planting ..... 11  
 Roadside Fill Slope Planting .....13  
 Planting in Barrired Raised Areas Between Roads.....15  
 Planting in Barrired At-Grade Areas Between Roads ..... 16  
 Community Gateways.....16  
     Criteria.....16  
     Community Gateway Design.....16  
 References .....16

**Figures**

Figure 1: Vicinity Map..... 2  
 Figure 2: Chorded Wall Layout..... 2  
 Figure 3: Wall End Treatment..... 2  
 Figure 4: Textured Inset Location for Barriers on Bridges ..... 3  
 Figure 5: Raised Panel Concrete Surface Treatment ..... 6  
 Figure 6: Roadside Planting on Cut Slopes ..... 7  
 Figure 7: Tree Protection Area (TPA) ..... **Error! Bookmark not defined.**  
 Figure 8: Roadside Planting on Cut Slopes with Barrier or Guardrail. ....13  
 Figure 9: Roadside Planting on Fill Slope.....14  
 Figure 10: Roadside Planting on Fill Slope with Barrier or Guardrail. ....14  
 Figure 11: Planting in Barrired Areas Between Roads. ....15

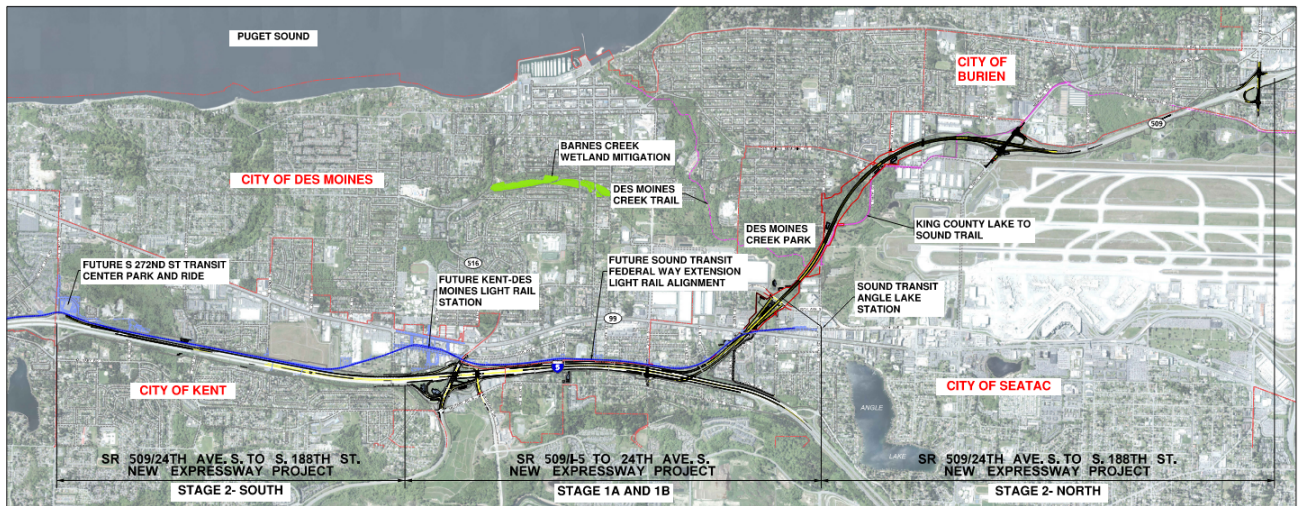


Figure 1: Vicinity Map

## Purposes and Objectives

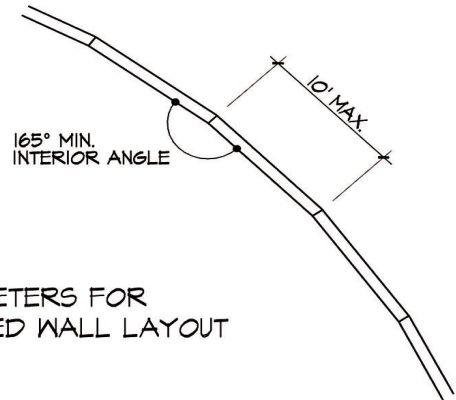
This document provides visual and aesthetic criteria for SR 509 Completion - Stage 2 Project for SR 509 between 24th Avenue S. interchange to S. 188th Street/Des Moines Memorial 8 Drive (DMMD) interchange and I-5 between the S. 272nd Street 23 interchange and the SR 516 interchange. Figure 1 The Design-Builder shall locate the aesthetic transitions to enhance corridor continuity, such as at ends of walls, barriers or abutments.

## Retaining Walls and Noise Walls

### CRITERIA

#### WALL ALIGNMENT

- Retaining walls on long curves shall follow the road along a curved alignment.
- If walls cannot be constructed in curved sections, walls shall be constructed in a series of short-chorded sections that appear to be on an arc or curving alignment (Figure 2).
- Walls shall parallel the highway alignment without jogs, offsets, or pronounced undulations.
- Wall transitions needed to move walls away from or toward the road shall be done gradually over long curves.
- Short jogs and zigzags in wall alignments shall only be allowed where walls parallel ROW boundaries that jog.
- Where possible, wall ends shall be curved into earth berms (Figure 3).



PARAMETERS FOR  
CHORDED WALL LAYOUT

Figure 2: Chorded Wall Layout

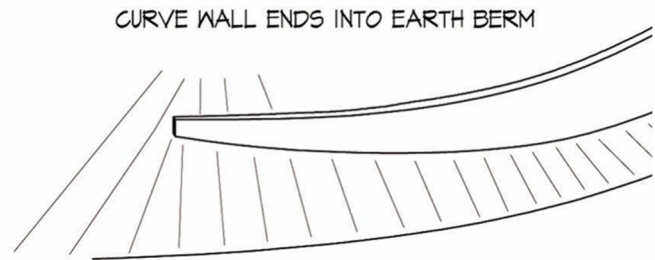


Figure 3: Wall End Treatment.

#### TOP OF WALL PROFILE

- All walls shall be capped by a 12-inch Class 2 smooth finish concrete band or cap with assigned corridor texture below.
- Abrupt sags and crests along the top of wall shall be avoided.
- Short steps along the top of retaining walls shall be avoided. For pre-cast walls, the top of the wall may be stepped. The vertical steps shall be in 2', 3', or 4' increments and be placed at joints in pre-cast wall panels. Horizontal runs shall be constructed in accordance with Section 6-12 of the Standard Specifications
- If top of wall cannot be constructed along a curved profile, the top shall be constructed in a series of short chorded sections that appear to be curved.
- When both the horizontal alignment and top of wall curve, the curves shall be coordinated to visually complement each other with vertices that align.
- Where retaining walls abut concrete bridge rails, the top of the retaining wall shall be aligned flush with the top of the concrete bridge rail.
- The profile of upper retaining walls or noise walls shall be compatible with the profile of lower walls and barrier walls. Mixing of dissimilar profiles such as steps with curves or contrary vertices shall be avoided.
- Where shown in the Conceptual Plans, the top of a retaining wall may be extended vertically to function as a barrier wall or noise wall.

#### WALL BATTER

- Front-battered cast-in-place retaining walls shall not be used. Batter that faces the retained side is permissible.

## **Bridges**

#### CRITERIA

##### SUPERSTRUCTURE

- Beam and girder depths shall be kept constant over multi-span structures.
- Beam and girder depths on closely adjacent structures visible to the traveling public shall be visually similar.
- Where an existing bridge only requires lengthening or widening, the new components shall be visually similar to the existing bridge structure type.
- Drainage pipes and other conduits shall be concealed in spaces between girders and in recessed slots or grooves in piers and abutments.
- Bird prevention spikes shall be used on all potential bird perch locations, defined as any flat surface on structures that may provide bird perching locations.
- Simple and consistent bracing patterns made up of as few members as possible shall be used. Complex bracing patterns, variable patterns, and patterns composed of many small members shall be avoided.
- Minimize superstructure depth. Maintain constant superstructure depths along the length of the bridge with necessary variations gradually and gracefully proportioned.

#### PIERS

- Round pier columns shall be used for all new bridge structures.
- Exposed projecting pier caps shall not be used.
- Where multiple piers are visible at the same time, piers of varying heights shall appear to have same width.
- Locate columns under parallel bridges along a common line at each bend.

#### ABUTMENTS AND WING WALLS

- At places where the abutments of more than one bridge are visible, the angle between the roadway and the abutment shall be equal for all the visible abutments.
- Where abutment walls and wing walls tie into retaining walls, the same patterning and color shall be used on all wall surfaces.
- Abutment slope protection shall be a minimum of 3:1 slope and shall not exceed 2:1 slope at edge of planted areas.
- Front-battered cast-in-place walls shall not be used.

## Safety Barriers

#### CRITERIA

##### ROADSIDE BARRIERS

For consistency throughout the SR 509 and I-5 corridors, concrete traffic barriers shall be used wherever roadside barriers are required along the highway mainline and entry/exit ramps. Single-slope concrete barriers shall be used at all locations unless specified otherwise in Chapter 2, *Technical Requirements*. In medians on SR 509, barriers shall be high performance.

- Certain barrier sections shall function as short retaining walls that support planter areas in the median and along the roadside. These barrier wall sections shall be sealed to retain soils to within 4 to 6 inches of the top of the wall. Drainage shall be provided for these planters if infiltration is not possible.
  - Where local streets cross over the highway, concrete barriers along the highway shall extend continuously under the bridge in front of piers, abutments, and retaining wall structures. Areas behind the barrier (between the barrier and the pier or abutment) shall be surfaced with concrete slope protection or capped with concrete according to Standard Detail C-85.10-00.

##### BARRIERS ON STRUCTURES

- The tops of concrete traffic barriers shall slope toward the roadway.
- Concrete traffic barriers shall be extended across the tops of the bridge wing walls for better integration of bridge components and to accentuate the horizontal lines of the bridge.
- Where concrete traffic barriers on bridges abut retaining walls, the tops of barriers shall be aligned flush with tops of walls. Class 2 smooth finish vertical bands shall be provided at ends of barriers where they abut retaining walls.
- Where concrete traffic barriers on bridges abut traffic barriers on ramps, the tops of barriers shall be aligned flush. Class 2 smooth finish vertical bands shall be provided at ends of barriers on bridges where they abut traffic barriers on ramps.

- The same surface treatment shall be used on the outside of ramp barriers as was used on bridge barriers.
- Whenever possible, the ends of the concrete barriers shall be buried in the back slope in accordance with the WSDOT *Design Manual*, and use of impact attenuators shall be minimized.
- Pedestrian guardrails will be designed to allow the maximum visibility through the railing consistent with safety requirements.

## Sign Structures and Toll Gantries

### CRITERIA

- Where signs must be located over the roadway, they shall be mounted on simple mono-tube structures. Mono-tubes for signs and toll gantries and toll gantry hangers shall be painted "Mount St. Helens Gray" on SR 509 and "Blue Gray" ( SAE AMSStandard 595 Color Number 35237) on I-5.
- Signs shall be placed on sign-mounting structures instead of on the sides of bridges.
  - Exceptions:
    - Where signs on pre-existing bridges will be replaced with new signs.
    - Where signs must be mounted on a bridge overpass to serve the under-passing road, the signs shall be attached unobtrusively. The tops of the signs shall not extend above the tops of the bridge rails, and the bottoms of the signs shall not extend below the bottoms of the bridge structures.
- Where local streets cross over the highway, erecting signs on the over-crossing bridge to serve the over-crossing roadway shall be avoided; instead, signs shall be located before or after the bridge.
  - Exception:
    - Where pre-existing signs on over-crossing roadway will be replaced with new signs.
- Where signs must be mounted on new bridges, a mounting monotube or bar shall be placed spanning all lanes of traffic to accommodate sign movements for future potential re-channelization of traffic.
- The size and location of signs and mounting structures shall be compatible with other highway structures, lighting, and landscaping.

## Right-Of-Way Fencing and Fall Protection Aesthetics

### CRITERIA

#### RIGHT-OF-WAY FENCING

- Fencing shall be Type 3, in accordance with the WSDOT *Standard Plans*.
- Fencing shall be coated in accordance with the WSDOT General Special Provisions (GSPs) in the color "Black."

#### FALL PROTECTION

- Fall protection shall be galvanized cable fence, as detailed in the WSDOT *Bridge and Design Manual*, Chapter 8.

FALL PROTECTION EXPOSED TO PUBLIC VIEW

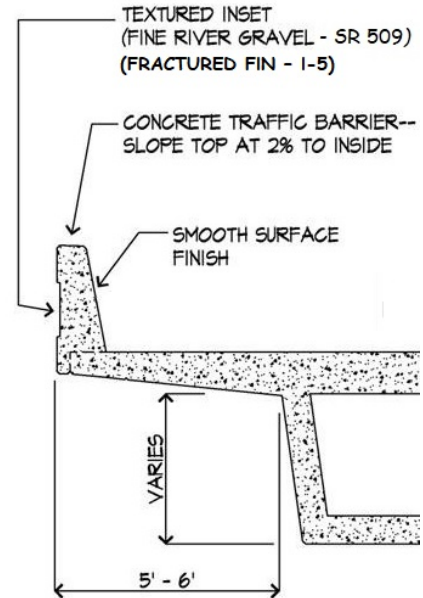
- Fall protection exposed to public view shall have all galvanized surfaces painted in accordance with Section 6-07.3(11)A of the WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*. The color of the finish coat, when dry, shall match the color of the wall or barrier in which it is mounted.

## Surface Texture Aesthetics

### CRITERIA

The surfaces of concrete elements shall be finished or textured as follows:

- SR 509:
  - Noise walls shall be “Coarse River Gravel” on the side facing SR-509 and “Ashlar” on the community-facing side.
  - Abutment support walls, abutment wing walls, retaining walls and noise walls shall be “Coarse River Gravel”.
    - Form liners of abutment support walls, abutment wing walls, and retaining walls shall be Mammoth Cobblestone Pattern Number 1536, supplied by Spec Formliners, Inc., Santa Ana, California, 92701, telephone number (714) 429-9500.
  - Bridge columns and superstructures, including bridge deck cantilevers, shall be Class 2 smooth textured.
  - Concrete traffic barriers on bridges and on retaining walls shall be textured as shown in 4.
    - The inset for concrete traffic barriers shall be “Fine River Gravel” as described below.
    - Form liners for concrete traffic barriers on bridges shall be 1-inch Round Stone Pattern Number 1609 as supplied by Spec Formliners, Inc., 1038 East 4<sup>th</sup> Street, Santa Ana, California, 92701; telephone number (714) 429-9500.
  - Traffic barriers on grade shall be Class 2 smooth textured. This does not apply to barriers over buried structure retaining walls. See above for surface finish requirements for this condition.
- I-5:
  - Abutment support walls, abutment wing walls, and retaining walls shall be “Raised Panel” (Figure 5).
  - Noise wall texture on highway side “Fractured Fin” (see the WSDOT Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects, Appendix L)
  - Noise wall texture on community side “Ashlar Stone Finish” (see the WSDOT *Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects*, Appendix L)
  - Bridge columns and superstructures, including bridge deck cantilevers, shall be Class 2 smooth textured.



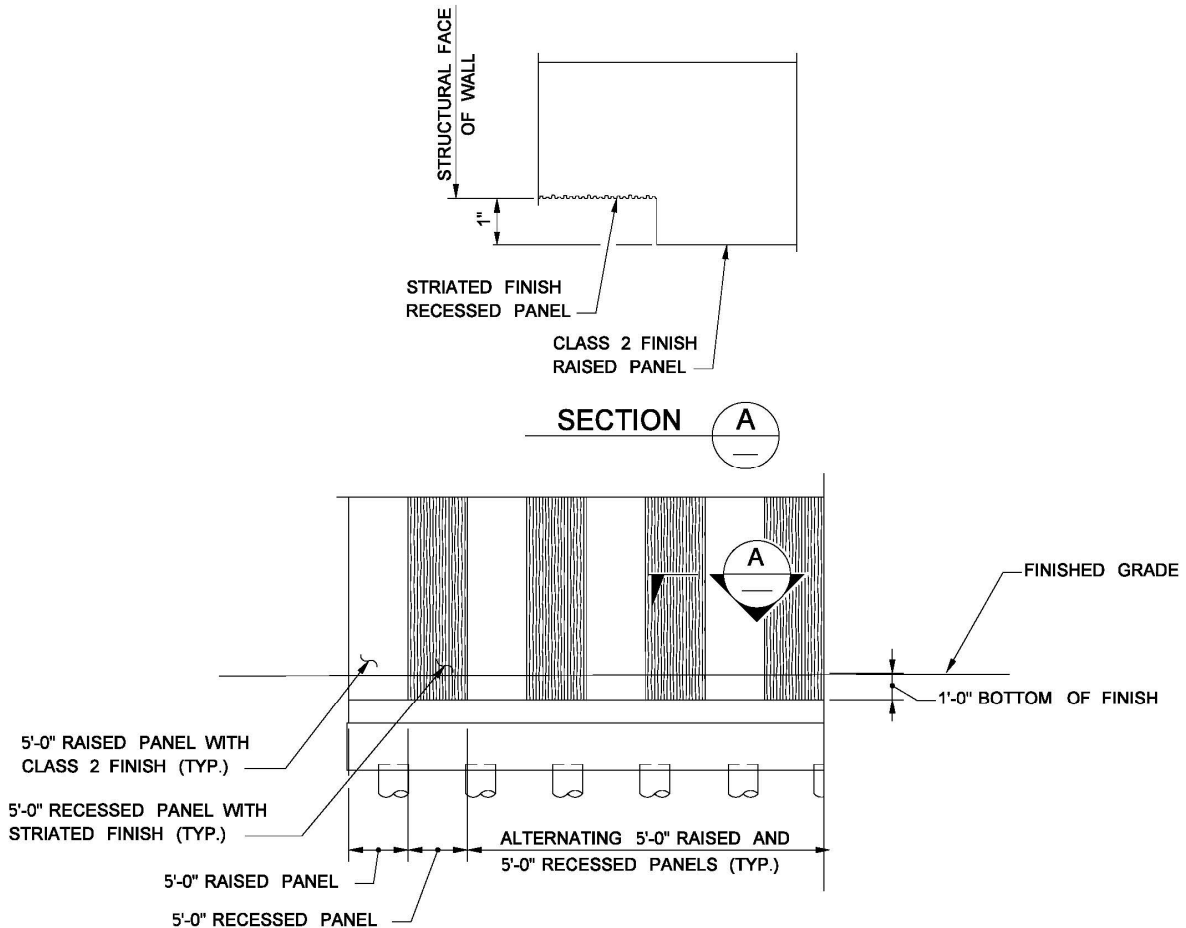
**Figure 4: Textured Inset Location for Barriers on Bridges and Retaining Walls.**

Exterior surface of concrete traffic barriers on bridges and I-5 over Veterans Drive Tunnel shall be textured with "Fractured Fin". Top and interior surfaces shall be smooth. See Appendix L2



WSDOT *Standard Concrete Finishes for Bridges & Structure Construction in Highway Projects* for Fractured Fin details.

- The inset shall be “Fractured Fin”; see *WSDOT Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects*, Appendix L.
- Traffic barriers on grade shall be Class 2 smooth textured.



**Figure 5: Raised Panel Concrete Surface Treatment.**

## Color Aesthetics

### CRITERIA

All concrete surfaces except for pavement shall be treated with a pigmented sealer.

- Bridge structures including exterior side and bottom of exterior girders, all sides of the superstructure, all sides of every cap beam, and all above-grade portions of every column to 1-foot below grade.
  - SR 509:
    - The color for abutment walls, wing walls and pier columns shall be “Mount St. Helens Gray.”
    - The color for bridge superstructures, deck cantilevers, and concrete bridge rails shall be “Washington Gray.”

- I-5:
  - The color for all concrete shall be “Washington Gray.”
- Retaining walls and noise walls to 1-foot below grade
  - SR 509:
    - The color for retaining walls and noise walls shall be “Mount St. Helens Gray.”
    - The color for bridge superstructures, deck cantilevers, and concrete bridge rails shall be “Washington Gray.”
  - I-5:
    - The color for all concrete shall be “Washington Gray.”
- Fencing
  - Fencing shall be coated in accordance with the WSDOT General Special Provisions (GSPs) in the color “Black.”
- Barriers
  - SR 509:
    - The color for roadside barriers shall be “Mount St. Helens Gray.”
    - The color for barriers on structures shall be “Washington Gray.”
  - I-5:
    - The color for roadside barriers shall be “Washington Gray.”
- Railings
  - Fall protection exposed to public view shall have all galvanized surfaces painted in accordance with Section 6-07.3(11)A of the WSDOT *Standard Specifications for Road, Bridge, and Municipal Construction*. The color of the finish coat, when dry, shall match the color of the wall or barrier in which it is mounted.
- Sign Structures and Toll Gantries
  - SR 509:
    - Mono-tubes for signs and toll gantries and toll gantry hangers shall be painted “Mount St. Helens Gray”
  - I-5:
    - Mono-tubes for signs and toll gantries and toll gantry hangers shall be painted “Blue Gray” (Federal Standard 595 Color Number 3527).
- Lighting
  - SR 509:
    - Light-mounting poles shall be “Galvanized”
  - I-5:
    - Light-mounting poles shall be “Galvanized.”
  - On city streets outside of WSDOT ROWs, the color shall be according to Local Agency standards.

- Downspout drains and scuppers on bridges
  - Where visible to the public, downspout drains and scuppers on bridges shall be painted to match the bridge structure pigmented sealer.
- All metal Work including but not limited to camera poles and ramp meter signal poles shall be:
  - SR 509:
    - “Galvanized”
  - I-5
    - “Galvanized.”
  - On city streets outside of WSDOT ROWs, the color shall be according to Local Agency standards.

## Lighting Aesthetics

### CRITERIA

The corridor light fixture shall be a standard WSDOT Type 3 medium-cut-off fixture with flat glass optics and an LED source. The mounting pole shall be a WSDOT Type 1 galvanized steel pole with finishes as indicated below.

- The proposed standards and luminaires shall be consistent throughout the SR 509 and I-5 corridors. The proposed lighting for local roads shall be designed and constructed in accordance with local jurisdiction standards.
- The lighting plan shall be coordinated with the design of walls and bridges.
- For short bridge spans, lights should be located off the structure or only at the ends of the structure, if possible.
- Where continuous lighting is used on a bridge, lighting shall be located at uniform intervals in locations that are visually integrated with the bridge structure, such as at pier lines.
- On Des Moines Memorial Drive corridor, pedestrian lighting shall be in accordance with the requirements that are outlined in the *Des Moines Memorial Drive plan*.

## Intelligent Transportation Systems

### CRITERIA

- WSDOT Intelligent Transportation System (ITS) cabinet locations and finish shall comply with the maintenance access and placement requirements in Section 2.18, *Intelligent Transportation Systems*, and shall not be placed within the clear zone or sight triangles.

## WSDOT Drainage and Utilities

### CRITERIA

- When extending utilities across bridges, pipes and conduit shall be concealed in the bridge superstructure. Neither conduit nor pipes shall be attached to visually exposed surfaces on bridges and walls.
- Additional conduits for future use shall be provided on all bridges.
- Use of bridge drains is discouraged. If water must be drained on a bridge, a drop drain shall be used if possible. If a drop drain is not possible, the bridge engineering, hydraulic

engineering, bridge maintenance staff, and landscape architect shall jointly design an acceptable bridge drain location. Ideally, the bridge drain will be concealed in the recessed slots in the piers.

## Vegetation

### CRITERIA

#### GENERAL

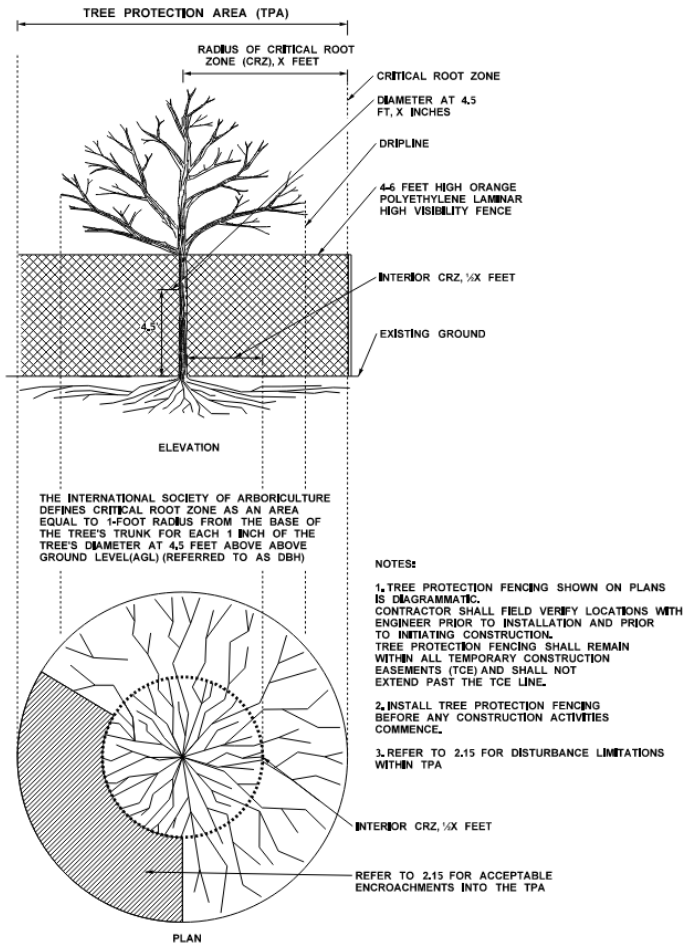
The following planting criteria apply to all planting areas within the project and Barnes Creek Mitigation site outside of the project limit. For visual consistency and integration with the adjacent landscape, plants in the SR 509 and I-5 corridors shall be mostly natives or have the visual characteristics of native plants. Plants in Barnes creek mitigation site shall be only native and in accordance with the conceptual plans. All use of plant and soil material, as well as stream and buffer restoration at UNT to South Fork McSorely Creek, shall follow the requirements of *Plant, Soil, and Environmental Restoration Design Criteria* (Appendix L)

- Plant mixes along the extended and reconstructed highway, as well as along I-5, shall be characteristic of the region, be suited to local climate and soils, have low maintenance requirements, and provide year-round visual buffering. Use mixes and cultivars resistant to disease.
- Disturbed ROW along I-5 will be restored to blend with existing I-5 corridor vegetation and the proposed FWLE vegetation and to provide visual buffering from and for adjacent properties.
- Plant species selected for city streets shall meet the requirements of the Local Agency of the city street.
- Selected plant species shall meet the criteria for planting near airports. Specifically, species height shall be restricted within the Port of Seattle Flight Safety Corridor and attraction of birds that might flock around aircraft shall be minimized within 10,000 feet of the runways. Taller species may be used in lower tiers of cut sections of roadway, but because of flight path considerations, only species that at maturity will not become obstructions within the Port of Seattle Flight Safety Corridor shall be used.
- Selection of plant species and final placement and layout of plants shall be coordinated with the WSDOT NWR Landscape Architecture Office. Planting conditions to be implemented for the SR 509 extension and I-5 reconstruction are described in the following sections.
- The planting for SR 509 and I-5 shall be in accordance with the Built Character outlined in the WSDOT *Roadside Policy Manual* with the exception that Roadside Zone 2 will be planted with shrubs and groundcovers. Seeding (includes erosion control grasses, turf grass and any sod or seeded mix) shall only occur as described in the following sections. The planting shall improve visual quality through visual continuity and view buffering. The planting shall consist predominantly of coniferous trees with intermittent deciduous trees. Low and medium height shrubs or vining plants shall be used on the ground plane to stabilize soils, eliminate the need for mowing and trimming around trees and shrubs, and inhibit the growth of invasive plants. The layout and composition of the vegetation buffer shall be adapted to work with cross-section grading, ROW width, clear zone and sight distance requirements, and stormwater collection and treatment facilities. For all other planting requirements, see the *Plant, Soil, and Environmental Restoration Design Criteria*.
- The planting for Barnes creek mitigation site shall be in accordance with the requirements outlined in the conceptual plans.

- Planting areas shall meet the roadside functions outlined in the *WSDOT Roadside Policy Manual* and be designed in accordance with the *WSDOT Roadside Manual*.
- All planting areas shall meet the requirements described in the *Plant and Soil Material Design Criteria* (Appendix L).

**VEGETATION PROTECTION**

For existing trees to be protected within the project area or adjacent to the Impact Area Line, a certified arborist shall establish the Tree Protection area (TPA). See figure 7 for the standard calculation of the TPA.



**Figure 5: Tree Protection Area (TPA)**

**ROADSIDE CUT SLOPE PLANTING**

The following planting criteria are for a roadside cross-section consisting of ditch or swale, with a cut slope extending above the ditch to approximately the ROW line. The roadside may be with or without a barrier or guardrail.

- Coniferous trees shall be provided on upper parts of slopes; they shall be planted in slightly irregular rows two to three plants deep, outside of the clear zone and within the ROW.
- Intermittent short gaps in conifers shall be provided every 100 to 300 yards. Upper-story and lower-story deciduous trees shall be inserted into gaps. Deciduous trees shall be far enough from the roadway to minimize the amount of leaves that enter the drainage systems.

- Medium/low shrubs shall be planted among trees and, in places, in front of trees.
- Within the clear zone, on the lower slope below the trees, and above the ditch (if present), medium to low shrubs or non-climbing vining ground covers shall be provided to create a gradation or transition from grass to trees. Shrubs and ground covers may undulate in and out of the clear zone (Figure 7).
- Where barrier or guardrail are provided continue shrub and tree planting to barrier or guardrail with a minimum 5 feet setback. (Figure 4).
- Plants shall be laid out in informal, slightly irregular massings (Figure 7).
- Grass shall only be planted where barrier or guardrail are not provided and shall be limited to one-pass mowing no wider than 10 feet.
  - Exceptions:
    - Roadside ditch and ditch side slopes shall be planted with permanent erosion control grasses.

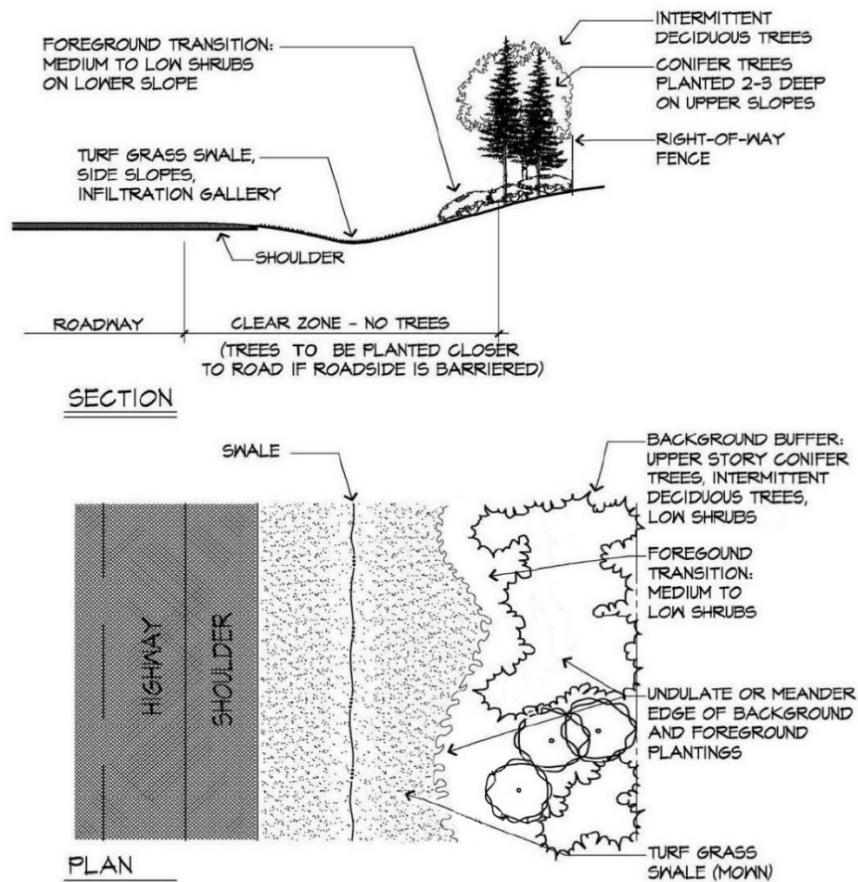
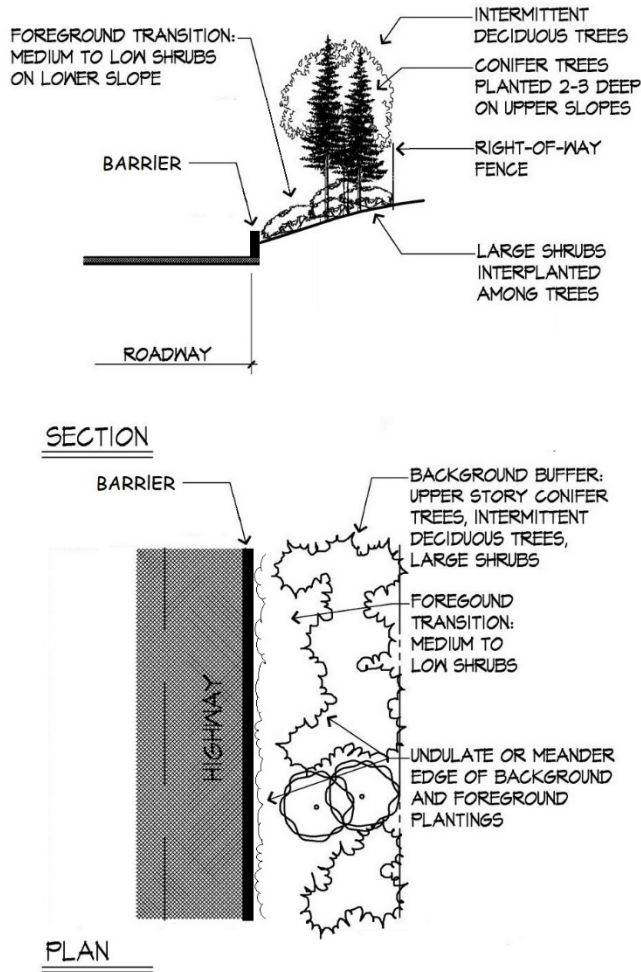


Figure 7: Roadside Planting on Cut Slopes



**Figure 4: Roadside Planting on Cut Slopes with Barrier or Guardrail.**

#### ROADSIDE FILL SLOPE PLANTING

The following planting criteria are for a roadside cross-section consisting of a fill slope between the edge of shoulder and existing grade or ROW line. The roadside may include stormwater treatment facilities. The roadway may be with or without a barrier/guardrail.

- Coniferous trees shall be provided on lower parts of slopes. They shall be planted in slightly irregular rows two to three plants deep, outside of the clear zone and within the ROW (Figure ).
- Intermittent gaps in conifers shall be provided every 100 to 300 yards and upper story and lower story deciduous trees shall be inserted into gaps. Deciduous trees shall be far enough from the roadway to minimize the amount of leaves that enter the drainage systems.
- Small-medium shrubs shall be planted among conifer trees and, in places, in front of conifer trees.
- Within the clear zone, on the upper slope above the conifers, medium to low shrubs and/or non-climbing vining ground covers shall be provided to create a stepped or graduated transition from grass to trees. The edge of the shrub or ground cover foreground shall undulate slightly toward and away from the road.

- Plants shall be laid out in informal, slightly irregular massings.
- Unless a barrier or guardrail is present, the upper part of slopes shall be planted with erosion control grasses limited to one-pass mowing no wider than 10 feet.
- Where barrier or guardrail are provided continue shrub and tree planting to barrier or guardrail (Figure ).

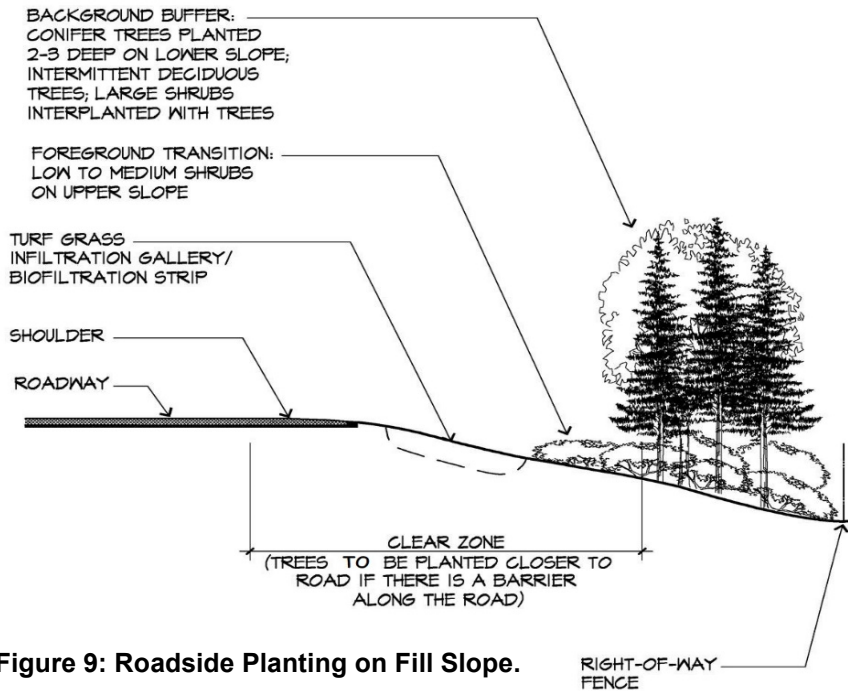


Figure 9: Roadside Planting on Fill Slope.

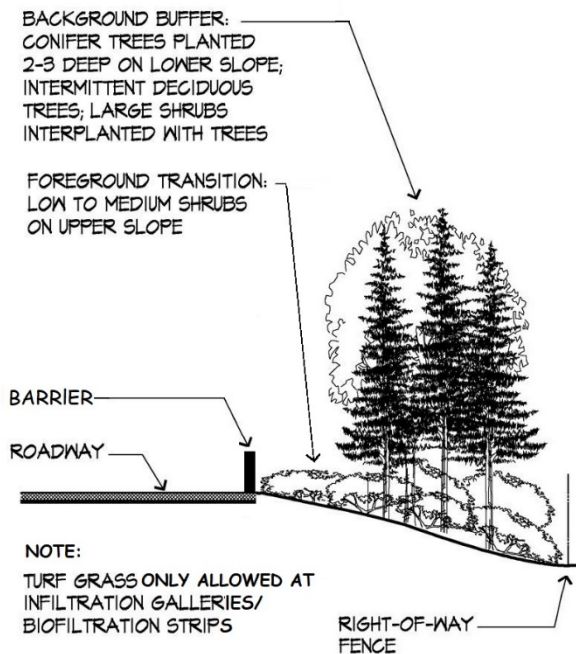


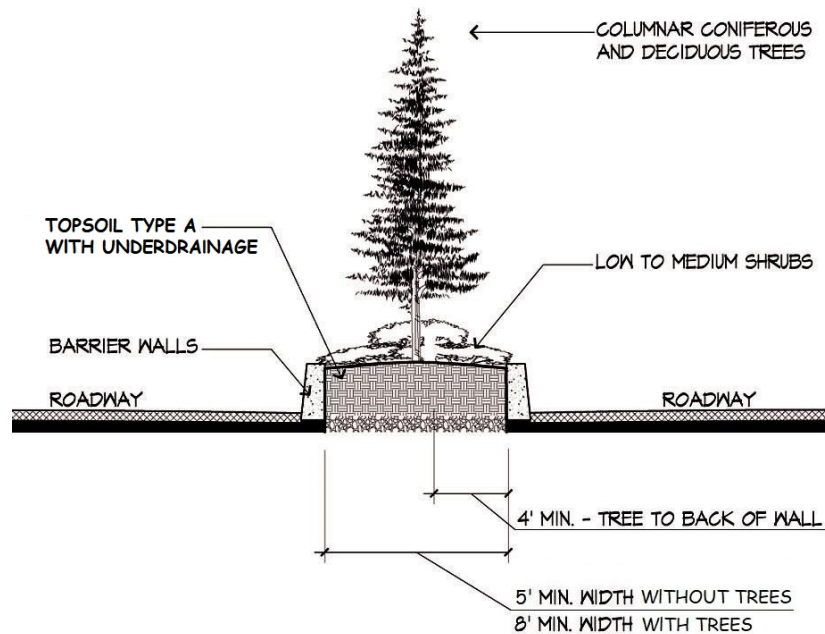
Figure 10: Roadside Planting on Fill Slope with Barrier or Guardrail.



**PLANTING IN BARRIERED RAISED AREAS BETWEEN ROADS**

The following planting criteria are for raised planter areas between concrete barriers. This situation would occur where narrow medians are flanked by barriers and the area between barriers is filled with soil to form a raised planter strip. A similar condition would occur in linear areas between the mainline highway and on/off-ramps.

Generally, these planter strips shall be planted with trees and shrubs that provide vertical mass and density to improve drivability and guidance by shielding headlight glare and screening visual clutter and the distraction of on-coming traffic. Plantings in these areas shall create as much visual separation between pavements as possible without overhanging the roadway or violating clear zones. Widths are measured from back of barrier to back of barrier.



**Figure 5: Planting in Barriered Areas Between Roads.**

- The minimum raised planter width shall be 5 feet. Trees in planter areas 8 feet to 10 feet wide shall be predominantly narrow conifers spaced to form linear and fairly uniform vertical plant masses. Low to medium-height shrubs shall be used to cover open ground areas in the planter strips.
- Raised planter strips 10 feet wide and greater shall be planted with a combination of columnar deciduous and conifer trees. Trees shall be spaced to form fairly uniform linear plant masses. Groups of coniferous trees shall be alternated with groups of deciduous trees for visual interest. So that drainage systems are not clogged by falling leaves, deciduous trees shall not be located near drains. Low to medium shrubs shall be used to cover open ground in planter areas.
- Strips between barriers less than 5 ft. wide shall be capped with concrete in accordance with Standard Plan C-85.10-00 to prevent accumulation of debris between barriers.
- Planter strips between barriers shall be raised (Figure 5).
  - Exceptions:
    - Where stormwater facilities require lower grades planter areas shall meet the requirements of Planting in Barriered At-Grade Areas Between Roads.
    - Grade transitions to these areas shall be gradual in compliance with Slope Treatment Standard Plan A-20.10-00 with slopes not exceeding 3:1.

#### PLANTING IN BARRIERED AT-GRADE AREAS BETWEEN ROADS

The following planting criteria are for at-grade median areas and areas between the highway mainline and on/off-ramps where raised planters are not feasible.

Stormwater treatment facilities in these areas shall have linear or curvilinear configurations, and, depending on the layout and size of the treatment system, plants shall be located around the treatment facility. Plantings shall be closely coordinated with requirements for siting, operating, and maintaining stormwater facilities. Permanent irrigation is not allowed in areas near the infiltration systems. Plants selected shall be appropriate for the hydrozones.

The planting criteria for Planting in Barriered Raised Areas Between Roads shall apply to this section, with the following additional requirements:

- The minimum distance between plants and stormwater facilities shall be 6 feet.
- Only evergreen trees and shrubs shall be used near stormwater facilities.
- Surface treatments and plant coverings (such as grass) for stormwater facilities shall be determined by the WSDOT Engineer. Grass behind barriers shall be limited to stormwater facilities. Maintenance equipment access for parking and mowing shall be provided.
  - Access to grass areas for maintenance and mowing shall be provided for in the design.

#### MAINTENANCE ACCESS PLANTING

The I-5 culvert access path surface shall be paved within the design vehicle wheel track only. Paved area shall not exceed 40% of total access route surface. All other areas within the access path shall be planted in Topsoil Type A, with full mulch coverage. For planting and soil preparation requirements see the *Plant, Soil, and Environmental Restoration Criteria (Appendix L)*.

The I-5 culvert access turnaround area shall be surfaced with pavers within truck turn footprint, with a buffer of 5'-0" from the outside edge of the wheel path. Pavers shall have a minimum dimension of 18" x 18" and shall have 18" planted gaps. Paver area shall not exceed 25% of total turnaround footprint. All other areas within the turnaround area shall be planted in Topsoil Type A, with full mulch coverage. For planting and soil preparation requirements see the *Plant, Soil, and Environmental Restoration Criteria (Appendix L)*.

## Community Gateways

#### CRITERIA

##### COMMUNITY GATEWAY DESIGN

The Design-Builder shall initiate and facilitate the process to determine specific design and character elements for the community gateway at 24<sup>th</sup> Avenue South with the City of SeaTac. The design must meet the WSDOT *Roadside Policy Manual* parameters for community gateways and Chapter 950 of the WSDOT *Design Manual*, and be consistent with previous stages of the project. Design elements will need to be approved by WSDOT. The Design-Builder shall facilitate and implement the community gateway design, construction and agreements.

## References

- Washington State Department of Transportation. *Roadside Manual* M 51-02 (Appendix D).
- Washington State Department of Transportation. *Roadside Policy Manual* M 3110 (Appendix D).

- Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction M 41-10 (Appendix D)
- Washington State Department of Transportation. Standard Concrete Finishes for Bridge & Structure Construction in Highway Projects. (Appendix L)
- Washington State Department of Transportation. *Standard Plans* M 21-01 (Appendix D).

## REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

### ATTACHMENTS

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

### I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

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

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

**1. Equal Employment Opportunity:** Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (see 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

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

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

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

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

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

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

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

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

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

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

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

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

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

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

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

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

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

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

#### **6. Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

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

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

**7. Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

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

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

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

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide

sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

**8. Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

**9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

#### **10. Assurances Required:**

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

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

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

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

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

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

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

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

### III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than \$10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

### IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway

Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

#### 1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act ([29 CFR part 3](#))), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act ([40 U.S.C. 3141\(2\)\(B\)](#)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH-1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in [29 CFR part 1](#), a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

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



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

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

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

c. *Conformance.* (1) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

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

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov). The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to [DBAconformance@dol.gov](mailto:DBAconformance@dol.gov), refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division

under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

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

## 2. Withholding (29 CFR 5.5)

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

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



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

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901–3907](#).

### 3. Records and certified payrolls (29 CFR 5.5)

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

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

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

b. *Certified payroll requirements (1) Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting

agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

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

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

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

(ii) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in [29 CFR part 3](#); and

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

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

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

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

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

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

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

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

(3) *Required information disclosures*. Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address

of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

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

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

(2) *Fringe benefits*. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

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

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

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

the equal employment opportunity requirements of Executive Order 11246, as amended, and [29 CFR part 30](#).

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

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

**7. Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract as provided in 29 CFR 5.5.

**9. Disputes concerning labor standards.** As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of eligibility.** a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)](#) or § 5.12(a).

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

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

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

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

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

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

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

## V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or

mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)\* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

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

### 3. Withholding for unpaid wages and liquidated damages

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

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

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its procurement costs;
- (3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
- (4) A contractor's assignee(s);
- (5) A contractor's successor(s); or
- (6) A claim asserted under the Prompt Payment Act, [31 U.S.C. 3901](#)–3907.

4. **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the

event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

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

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

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

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

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

### VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;

- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

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

## VII. SAFETY: ACCIDENT PREVENTION

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

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and

health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

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

## VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

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

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

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

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

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

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

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



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

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

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

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

**X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

**1. Instructions for Certification – First Tier Participants:**

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

\* \* \* \* \*

**2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:**

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

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

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

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

\*\*\*\*\*

**3. Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov>), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

\*\*\*\*\*

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

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

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

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

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

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

\*\*\*\*\*

#### **XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000. 49 CFR Part 20, App. A.

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

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

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or

cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

#### **XII. USE OF UNITED STATES-FLAG VESSELS:**

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

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

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

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

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.



**ATTACHMENT A - EMPLOYMENT AND MATERIALS  
PREFERENCE FOR APPALACHIAN DEVELOPMENT  
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS  
ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B)**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

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

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

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

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

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

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

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

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

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