



**CITY OF PHOENIX, ARIZONA
OFFICE OF THE CITY ENGINEER
DESIGN AND CONSTRUCTION PROCUREMENT**

REQUEST FOR QUALIFICATIONS

**RIO REIMAGINED: 3RD STREET RIO SALADO
BICYCLE/PEDESTRIAN BRIDGE
2-STEP CONSTRUCTION MANAGER AT RISK SERVICES
(READVERTISE)
ST87600140 RAISE**

**PROCUREPHX PRODUCT CATEGORY CODE 91200000
RFx NUMBER 600001672**

REQUEST FOR QUALIFICATIONS

The City of Phoenix is seeking a qualified Construction Manager at Risk (CMAR) to provide preconstruction services and complete construction services for the Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge project. The selected CMAR will work as a team with the designer of record and City staff to ensure an efficient design approach for the project. The bridge project site is located across the Rio Salado/Salt River along the 3rd Street alignment, extending from south of University Drive to the existing southern bank pathway. The estimated construction cost is \$23 million.

SECTION I - PROJECT DESCRIPTION

The Rebuilding American Infrastructure with Sustainability and Equity (RAISE) Grant project will connect the underserved South Phoenix community to transportation, housing, education and employment opportunities.

The full scope of the Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge project, will consist of constructing a bicycle and pedestrian bridge across the Rio Salado/Salt River along the 3rd Street alignment and add low-emitting solar pedestrian-scale lighting and pathway amenities to the existing asphalt pathway along the southern bank between Central Avenue and the City's eastern border limits at 40th Street. See Exhibit E for project location.

SECTION II – SCOPE OF WORK

The Construction Manager at Risk will begin with the firm in an agency support role for preconstruction services. The CMAR will assume the risk of delivering the project through a Guaranteed Maximum Price (GMP) contract. The CMAR will be responsible for construction means and methods, and will be required to solicit bids from prequalified subcontractors to perform the work using the City's subcontractor selection process. The CMAR may also compete to self-perform limited amounts of work. (or for horizontal work) For this project the CMAR is responsible for self-performing a minimum of 45% of the construction work as measured by total contract price for construction. **The GMP must be submitted in MAG or CSI format or it will not be accepted.**

A. Preconstruction phase services by the CMAR may include the following:

- attend and participate in project team meetings
- provide detailed cost estimating and knowledge of marketplace conditions
- provide project planning and scheduling
- provide for construction phasing and scheduling that will minimize interruption to City operations
- provide alternate systems evaluation and constructability studies
- advise City on ways to gain efficiencies in project delivery
- provide long-lead procurement studies and initiate procurement of long-lead items
- assist in the permitting processes
- participate with the City in a process to set a goal for local and SBE participation and implement the local and SBE process
- protect the City's sensitivity to quality, safety, and environmental factors
- advise City on choosing green building materials.
- address citizen, stakeholder, and/or political concerns
- attend and participate in project team meetings
- collaborate with design team to prepare necessary exhibits for presentations to stakeholders including regulatory agencies

- collaborate with the City and design team to meet project requirements, including scope, schedule, and budget
- prepare a subcontractor and supplier selection plan
- compliance with all federal, state, county, and city requirements
- assist design team in identifying utility and other easements
- evaluate existing conditions and identify project constraints
- provide recommendations relevant to surface/subsurface investigations

B. Construction phase services by the CMAR may include:

- construct the Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge
- select subcontractors/suppliers for this project
- prepare a Guaranteed Maximum Price (GMP) proposal that meets the approval of the City
- coordinate with various City of Phoenix departments, other agencies, utility companies, etc.
- arrange for procurement of materials and equipment
- schedule and manage site operations
- bid, award, and manage all construction related contracts while meeting City bid requirements including the local and SBE participation goal
- provide quality controls
- bond and insure the construction
- address all federal, state and local permitting requirements
- deal with City issues
- maintain a safe work site for all project participants
- host pre-construction conference, weekly construction coordination, and other meetings as required
- prepare, distribute, and finalize meeting minutes
- prepare and submit RFI's, submittals, proposal requests, and change orders for review/approval.
- timely upload and archive project related documentation into the City's Project Management System (UNIFIER)
- conduct construction site visits and submit daily field reports
- submit monthly progress payment requests
- provide detailed tracking of the RAISE Grant eligible reimbursable items
- prepare monthly construction progress reports
- provide monthly schedule updates
- schedule substantial completion walk-through inspection and punch list
- schedule final acceptance walk-through inspection
- provide record drawings and close-out related services (punch list documentation and resolution, O&M manuals, stakeholder personnel systems and equipment training, warranty/guarantee, record documents and electronic as-build documentation, final inspection and acceptance, schedule warranty walk)
- provide coordination and resources to achieve acceptance/approval for all testing or commissioning by all agencies, departments, designers, and consultants

The Bridge Selection Report prepared by T.Y. Lin International, Inc. is attached in Exhibit F. The Final Project Assessment Report will be uploaded to the ProcurePHX portal along with the Request For Qualifications.

Use of UNIFIER, an Application Service Provider (ASP) web-based project management database, may be required. The following information provides a guideline for utilization. Any questions related to the requirements of UNIFIER should be directed to the Project Manager.

- The CMAR will be required to maintain all project records in electronic format.
- The City provides an ASP web-based project management database which the CMAR will be required to utilize in the fulfillment of the contract requirements.
- The CMAR shall provide a computerized networked office platform with broadband internet connectivity.
- UNIFIER training will be provided through the City of Phoenix to firms under contract.

SECTION III – DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

This project will utilize federal funds and is subject to the requirements of Federal Regulations under the Rebuilding America Infrastructure with Sustainability and Equity (RAISE) program. Participation in the Disadvantaged Business Enterprise Program is highly encouraged.

SECTION IV - PRE-SUBMITTAL MEETING

A pre-submittal meeting will be held at 1:00 p.m., Phoenix time on Thursday, October 10, 2024, at 1034 E. Madison Street, Phoenix, AZ 85034, Gecko Conference Room. At this meeting, City staff will discuss the scope of work, general project requirements, and respond to questions from the attendees. It is strongly recommended that interested firms attend the pre-submittal meeting. Inquiries regarding the project scope outside of this pre-submittal meeting must be directed to the Contracts Specialist.

SECTION V - STATEMENT OF QUALIFICATIONS EVALUATION CRITERIA

One firm will be selected through a qualifications-based selection process based on the criteria below. Sub criteria are listed in order of importance in relation to project services. City of Phoenix project experience is not required.

A. General Information (100 points)

1. Provide a general description of the firm that is proposing to provide construction management services and general construction services. Explain the legal organization of the proposed firm or team. Provide an organization chart showing key personnel.
2. Provide the following information:
 - a. List the Arizona contractor licenses held by the firm and the key personnel who will be assigned to this project. Provide the contractor license number. Reference the appropriate licenses held, if needed. In order to be considered for this project, the contractor must hold the correct license as deemed appropriate by the Arizona Registrar of Contractors prior to submitting a Statement of Qualifications (SOQ) for this project in accordance with Arizona Revised Statute §32-1151.
 - b. Identify the location of the firm's principal office and the home office location of key staff on this project.
 - c. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last five years. Identify any claims arising from a contract

which resulted in litigation or arbitration within the last three years. Briefly describe the circumstances and the outcomes.

B. Experience and Qualifications of the Firm (250 points)

1. Identify at least three comparable projects in which the firm served as either CMAR, agency Construction Manager during design and construction phases (without providing construction services), or General Contractor. Special consideration will be given to firms that have provided Construction Manager at Risk services on similar successful projects. For each project identified, provide the following:
 - a. Description of the project
 - b. Role of the firm (specify whether Construction Manager at Risk, Construction Manager or General Contractor. If CMAR or General Contractor, identify the percent of work self-performed. Also specify services provided during design phase, i.e. cost estimating, scheduling, value engineering, etc.)
 - c. Project's original contracted construction cost and final construction cost
 - d. Construction dates
 - e. Project owner
2. List of all City of Phoenix projects where the firm provided CMAR, agency construction management, or general construction services in the last five years, either completed or ongoing.

C. Experience of Key Personnel to be Assigned to This Project (250 points)

1. For each key person identified, list their length of time with the firm and at least two comparable projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. For other projects provide the following:
 - a. Description of project
 - b. Role of the person
 - c. Project's original construction cost and final construction cost
 - d. Construction dates
 - e. Project owner
2. List any proposed consultants, (including DBEs), including key staff names and the experience and qualifications of these individuals.

D. Understanding of the Project and Approach to Performing the Required Services (400 points)

1. Discuss the major issues your firm has identified on this project and how you intend to address those issues.
2. Attached to this Request for Qualifications is the City of Phoenix general subcontractor selection plan (see Exhibit A). Describe how you intend to implement this subcontractor selection plan including your recommendations for subcontractor trades to be selected by qualifications only vs. qualifications and bids; and discuss the benefit that your subcontractor selection plan provides to the project.

3. Describe your firm's project management approach and team organization during design and construction phase services. Describe software systems and processes used for planning, scheduling, estimating, and managing construction. Briefly describe the firm's experience on quality control, dispute resolution, and safety management.
4. Describe the firm's bridge construction experience in constructing long-span steel bridges with cables and deep foundations.

E. Reference Check (21 points*)

Use the form provided (Exhibit B) to obtain at least three references (it is preferred no more than one be a City of Phoenix project). If your firm has not completed prior projects with other agencies, you will not be penalized. It is recommended there be references outside the City of Phoenix.

*These points are in addition to the 1,000 points for the SOQ.

SECTION VI - SUBMITTAL REQUIREMENTS

New Electronic Submittal Process: Firms interested in this project must submit a Statement of Qualifications (SOQ) electronically via email to the Contracts Specialist, Annette Perez at annette.perez@phoenix.gov.

Submittal requirements are as follows:

- Vendor Information: All firms must be registered in the City's Vendor Management System prior to submitting a proposal. For new firms, the City will send an email to your firm with a vendor number within two business days of submitting the request. The vendor number should be included on the cover of the SOQ. Information on how to register with the City is available at:**

<https://www.phoenix.gov/financesite/Pages/EProc-help.aspx>

If your firm is already registered with the City of Phoenix's ProcurePHX system, please visit <https://eprocurement.phoenix.gov/irj/portal> to login and access the electronic solicitation.

- The product category code for this RFQ is 912000000 and the RFx number is 6000001672.**
- Submittals:**
 - Experience Modification Rate (EMR) – provide current rating; the awarded company will be asked to provide verification upon contract execution.
 - Submittals must be **emailed** to the assigned Contracts Specialist, Annette Perez, by the submittal due date and time.
 - Submit only one SOQ electronically, in .PDF format only, addressing all evaluation criteria. No hard copies will be accepted.
 - Clearly display the firm name, vendor number, project title, and project number on the cover of the SOQ.

- A maximum of **14 pages** is permitted to address all content in the SOQ submittal **(Maximum page limit includes evaluation criteria and all additional content. It does not include information sheet.)**
 - Submit the Statement of Qualifications by **12:00 noon, local time, on Friday, October 25, 2024.**
 - Page size must still meet requirements of 8½” x 11”
 - Font size must not be less than 10 point
 - Content count:
 - ✓ Each side of a page containing evaluation criteria and additional content will be counted toward the maximum page limit noted above.
 - ✓ Pages that have project photos, charts and/or graphs will be counted towards the maximum page limit noted above.
 - ✓ Front and back covers, information sheet, Table of Contents pages, and divider (tab) pages **will NOT** be counted toward the maximum page limit noted above, unless they include evaluation criteria and additional content that could be considered by the selection panel.
- Information Sheet:** Provide an information sheet that includes project title, project number, RFx number, firm name, address, phone number, vendor number, and the name, title, email address and signature of your contact person for the project. Do not include any additional information.
- Evaluation Criteria:** Address the SOQ evaluation criteria.
- Bonding Statement:** **As a separate PDF attachment, include a statement of the firm’s bonding capacity from a Surety Company** (A- or better for the prior four quarters) along with your SOQ submittal. *(This bond statement will not be counted towards the maximum number of pages).*
- Additional Content:** Resumes and other information may be included *(content shall be included within the permitted maximum page limit).*
- Disadvantaged Business Enterprise Attachments:** Include completed DBE Clause Exhibit D and supporting documentation, as a separate PDF attachment electronically along with your SOQ submittal. DBE attachments do NOT count towards maximum page count.

Note: All pages exceeding the specified maximum page limit will be removed from the submittal and not considered in evaluating a submitted SOQ.

GROUNDS FOR DISQUALIFICATION:

Please be advised that the following **will be grounds for disqualification**, and will be strictly enforced:

- Submitting the SOQ to the assigned Contracts Specialist after the submittal due date and time.
- Violating the “Contact with City Employees” policy contained in this RFQ.
- Failure to provide bonding statement.

SECTION VII - SELECTION PROCESS AND SCHEDULE

The successful Contractor will be selected through a two-step process which is a qualifications-based selection that includes a cost value element.

During the first step, interested firms will submit their SOQ. The selection panel will evaluate the SOQs according to the criteria in Section V above and may select **up to three** firms as finalists to proceed to the second step of the procurement, which is the Request for Proposal (RFP) process.

During the second step, the RFP will be issued to the three finalists. The three finalists will submit technical and price proposals in response to the RFP. The finalists' proposals will be evaluated and scored in accordance with the RFP scoring methodology. The firm with the highest composite scores for the technical and price proposals will be selected for the procurement. The final step is the recommendation for award of the CMAR.

The City expects to create a final list of at least one, but not more than three firms for this project. The City will enter into negotiations with the selected firm and execute a contract upon completion of negotiation of contract terms for City Council approval.

The following tentative schedule has been prepared for this project. Firms interested in this project must be available on the interview date specified below. The Pre-submittal meeting is not mandatory.

Pre-submittal meeting	October 10, 2024
SOQs due	October 25, 2024
Short-List Notification	November 18, 2024
Issue Request for Proposal to Finalists	November 18, 2024
Pre-Proposal Meeting	November 22, 2024
Last day for questions	December 3, 2024
Request For Proposals Due	December 13, 2024
Award Selection Notification	Early January 2025
Scope Meeting	February 2025

If the City is unsuccessful in negotiating a contract with the best-qualified firm, the City may then negotiate with the next most qualified firm until a contract is executed, or the City may decide to terminate the selection process. Once a contract is executed with the successful firm, the procurement is complete.

Firms on the short list for interviews for this project will be notified directly by the City. Notification to all other firms on the status of a short list for this project will be posted on the City of Phoenix's "Tabulations, Awards, and Recommendations" website:

<http://solicitations.phoenix.gov/awards>

The firm selected for this project will be notified directly by the City. Notification to all other firms on the status of a selection on this project will be posted on the City of Phoenix's "Tabulations, Awards, and Recommendations" website:

<http://solicitations.phoenix.gov/awards>

SECTION VIII – CONSTRUCTION PHASE DAVIS BACON COMPLIANCE

The CMAR shall comply with "Federal Davis Bacon and Related Acts" in accordance with 29

CFR Part 3 and 29 CFR Part 5 as applicable for the construction phase contract. Prior to bidding to subcontractors, the CMAR shall obtain the effective federal wage determination to be included in all subcontracts.

SECTION IX - GENERAL INFORMATION

Citywide Capital Improvement Projects. Consulting and contractor services supporting the City's Capital Improvement Projects are procured under the authority of the City Engineer, currently located within the Street Transportation Department. Design and Construction Procurement coordinates the citywide consulting and construction contracting procurement processes.

Changes to Request for Qualifications. *Any changes to this Request for Qualifications will be in the form of a notification.* The City of Phoenix shall not be held responsible for any oral instructions. Notifications are available on both the Solicitations and ProcurePHX webpage.

It shall be the responsibility of the registered RFQ holder to determine, prior to the submittal of the Statement of Qualifications, if notifications have been issued. Registered RFQ holders may refer to the webpage or call the Contract Specialist (listed below) in order to ascertain if a Notification has been issued for this project.

Alternate Format. For more information or a copy of this publication in an alternate format, contact the Contract Specialist (listed below) - Voice or TTY 711. Requests will only be honored if made within the first week of the advertising period.

Release of Project Information/Public Records Request. The City shall provide the release of all public information concerning the project, including selection announcements and contract awards. Those desiring to release information to the public must receive prior written approval from the City. To submit a Public Records Request, visit phoenix.gov/prr.

City Rights. The City of Phoenix reserves the right to reject any or all Statements of Qualifications, to waive any informality or irregularity in any Statement of Qualifications received, and to be the sole judge of the merits of the respective Statements of Qualifications received.

Contact with City Employees. Beginning on the date the RFQ is issued and until the date the contract is awarded or the RFQ withdrawn, all persons or entities that respond to the RFQ, including their authorized employees, agents, representatives, proposed partner(s), subcontractor(s), joint venture(s), member(s), or any of their lobbyists or attorneys (collectively the Proposer), will refrain from any direct or indirect contact with any person (other than the designated Contract Specialist), including members of the evaluation panel, the City Manager, Assistant City Manager, Deputy City Managers, Department heads, the Mayor and other members of the Phoenix City Council. As long as the RFQ solicitation is not discussed, Proposers may continue to conduct business with the City and discuss business that is unrelated to this RFQ solicitation with City staff.

Commencing on the date and time a solicitation is published, potential or actual proposers (including their representatives) will only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under the Arizona Revised Statutes, until the resulting contract(s) are awarded or all offers or

responses are rejected and the solicitation is cancelled without any announcement by the procurement officer of the City's intent to reissue the same or a similar solicitation.

Proposers may discuss their proposal or the RFQ solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Contract Specialist (listed below), conducted in person at 200 W. Washington, Phoenix, Arizona 85003, and are posted as open meetings with the City Clerk at least twenty-four (24) hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

This policy is intended to create a level playing field for all Proposers, assure that contracts are awarded in public, and protect the integrity of the selection process. **OFFERORS THAT VIOLATE THIS POLICY WILL BE DISQUALIFIED.**

Conflict of Interest. The City reserves the right to disqualify any Proposer on the basis of any real or apparent conflict of interest that is disclosed by the proposal submitted or any other data available to the City. This disqualification is at the sole discretion of the City. Any Proposer submitting a proposal herein waves any right to object now or at any future time, before any body or agency, including but not limited to, the City Council of the City of Phoenix or any court.

Protest Procedures. Firms wishing to respond to disqualification or a procurement outcome may refer to The Code of the City of Phoenix Chapter 2, Article XII, Section 2-187 to 2-190.4, which governs protest procedures utilized throughout the selection process. The procedures may be reviewed through the City of Phoenix website at:

<http://www.codepublishing.com/az/phoenix/>

A copy of the Protest Policy is also available online at:

<https://www.phoenix.gov/streets/procurement-opportunities>

Questions. Questions pertaining to this selection process or contract issues should be directed Contracts Specialist, Annette Perez at (602) 273-3488 or email annette.perez@phoenix.gov.

EXHIBIT A
CITY OF PHOENIX SUBCONTRACTOR SELECTION PLAN
(EXCERPT FROM CMAR CONTRACT)

MAJOR SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

The selection of major Subcontractors and Suppliers may occur before Construction Services. Major Subcontractors and Suppliers may be selected based on qualifications alone or a combination of qualifications and price. Subcontractors must not be selected based on price alone. The selection of major Subcontractors and Suppliers is the Contractor's responsibility. In any case, the Contractor is solely responsible for the performance of all selected Subcontractors and Suppliers.

The Contractor must prepare a Subcontractor and Supplier selection plan and submit the plan to the City for approval. This selection plan must identify trades that may be selected by qualifications only and trades that to be selected by qualifications and competitive bid. This plan must also identify all Subcontractors that are not selected through a formalized qualifications-based selection process. The Subcontractor and Supplier selection plan must be consistent with the selection requirements included in this Contract.

Selection by qualifications only - the City may approve the selection of a Subcontractor(s) or Suppliers(s) based only on their qualifications when the Contractor can demonstrate it is in the best interest of the Project.

Qualification-based selection of a Subcontractor(s) or Supplier(s) should only occur during the design phase to achieve maximum benefit of Subcontractor's involvement before submittal of a GMP Proposal.

The Contractor must follow the approved Subcontractor selection plan when evaluating qualifications of Subcontractor(s) or Supplier(s), and the Contractor must provide the City with its review and recommendation.

The Contractor must receive City approval of the selected Subcontractor(s) and Supplier(s).

The Contractor must negotiate costs for services/supplies from each Subcontractor and Supplier selected under this method.

Selection by qualifications and competitive bid - the Contractor must follow the Subcontractor selection plan when evaluating qualifications of a Subcontractor or Supplier, and the Contractor must provide the City with its process to prequalify prospective Subcontractors and Suppliers. During Construction Services, all Work for major Subcontractors and Suppliers must then be competitively bid unless a Subcontractor or Supplier was selected by qualifications only.

EXHIBIT B
CONTRACTOR REFERENCE CHECK INSTRUCTIONS, FORM, AND SAMPLE
LETTER

The attached Contractor Performance Evaluation Form is to be provided to the agencies or entities for which your firm has recently provided services similar to those requested for this project. Provide the evaluation form to the Owner, or the Owner's representative directly responsible for oversight of the project to complete and submit to the email box listed below.

The first three references submitted will be accepted and the scores utilized as part of the evaluation process. Each reference check is worth up to 7 points for a total of up to 21 points available.

The form is to be completed by the agency or entity and uploaded to the (email box) at:

soq.referencechecks@phoenix.gov

The procurement identifier is:

6000001672

Attention: Annette Perez

Also attached is a sample performance evaluation cover letter that may be used when sending the reference check request.

Sample Contractor Performance Evaluation Cover Letter

Sample Cover Letter
Contact Name
Address of Reference

(Your Name) is responding to a Request for Qualifications (RFQ) from the City of Phoenix Office of the City Engineer's Design and Construction Procurement section.

The City is requesting reference information related to our past performance. As a part of the response submittal process, the City is requesting performance evaluations from agencies that our firm has performed services for either in the past or is currently receiving services.

I would appreciate your cooperation in completing the attached Contractor Performance Evaluation form and return by email the completed form by **12:00 pm Phoenix time** on **October 25, 2024** to:

soq.referencechecks@phoenix.gov

Reference in Subject Line: RFx 6000001672

For questions, contact Annette Perez, Contracts Specialist at 602-273-3488.

Failure to submit the Contractor Performance Evaluation form by the above date will have a negative impact on the proposal we submit for this service. Your cooperation in submitting this form by this date is appreciated.

If you have any questions regarding this request, please contact (your name) at (your telephone number).

Sincerely,

INSTRUCTIONS FOR COMPLETING CONTRACTOR PERFORMANCE EVALUATION

Evaluate the contractor's contract performance in each of the rating areas listed below. On the Contractor Performance Evaluation form, circle the rating from 1 to 4 that most closely matches your evaluation of the contractor's performance. Comments are not required but appreciated. **Every rating area must be scored.**

The Design and Construction Procurement section will use the information from this form to evaluate firms competing for contract award. **This completed form will become public record and upon request, will be released to the contractor or any other entity.**

Please submit the completed form to the address indicated on the bottom of the Contractor Performance Evaluation form. Thank you for your time and your cooperation.

**RIO REIMAGINED: 3RD STREET RIO SALADO
BICYCLE/PEDESTRIAN BRIDGE 2-STEP CMAR (READVERTISE)
ST87600140 RAISE**

CONTRACTOR PERFORMANCE EVALUATION FOR _____
(firm name)

In the box below, provide the project title, contracted services provided by the firm, and start and completion dates of services. This form is to be completed by the Owner, or the Owner's representative directly responsible for oversight of the project. The project services evaluated must be relevant to the services of this project. Every rating area must be scored.

RATINGS: Summarize the Contractor's performance and **circle the number** below that corresponds to the performance rating for each category. Please see the rating scale. Please do not use N/A for scoring.

1 = Unsatisfactory (.25 pt.); 2 = Poor (.50 pt.); 3 = Good (.75 pt.); 4 = Excellent (1.0 pt.)

HOW WOULD YOU RANK THE BUSINESS RELATIONSHIP BETWEEN THE OWNER AND THE FIRM?	4 3 2 1	Comments:
WAS THE TEAM PRESENTED IN THE PROPOSAL THE TEAM THAT WORKED ON THE PROJECT TO COMPLETION?	4 3 2 1	Comments:
WAS STAFF PROACTIVE IN SOLVING PROBLEMS THAT MAY HAVE OCCURRED ON THE PROJECT?	4 3 2 1	Comments:
WAS THE CONTRACTED SCOPE OF SERVICES COMPLETED ON TIME AND WITHIN BUDGET?	4 3 2 1	Comments:

HOW WOULD YOU RATE THE QUALITY OF WORK PERFORMED BY THIS FIRM ON YOUR PROJECT?	4 3 2 1	Comments:
DID THE FIRM RECOMMEND EFFICIENCIES OR PROVIDE INNOVATIVE IDEAS OR SUGGESTIONS?	4 3 2 1	Comments:
WOULD YOU BE WILLING TO CONTRACT WITH THIS FIRM AGAIN? (YES = 1 point)	YES NO	Comments:
TOTAL SCORE		(MAXIMUM 7 POINTS)

Reference Evaluation Provided By:

Name and Title: _____

Agency/Organization: _____

Date: _____

Telephone Number: _____

Email completed form by October 25, 2024 by 12:00 pm Phoenix time to:

soq.referencechecks@phoenix.gov

***EMAIL SUBJECT LINE SHOULD REFERENCE RFx NUMBER 6000001672**

The document should reference the project number and firm for which the reference check is being submitted. If no project number is available, reference the service and firm for which the reference check is being submitted.

EXHIBIT C – FEDERAL REQUIREMENTS

All work shall also be performed in accordance with the following additional documents:

The CMAR will comply with Buy American References established under Title 23 U.S.C. 313. Unless formally approved by the Federal Highway Administration, all acquired steel and manufactured products installed must be produced in the United States.

Required Contract Provisions for Federal-Aid Construction Contracts (Form FHWA 1273 Revised October 23, 2024);

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246), July 1, 1978, Revised November 3, 1980 and Revised December 9, 2014;

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246), July 1, 1978, Revised November 3, 1980 and Revised April 15, 1981;

Equal Employment Opportunity Compliance Reports, Federal-Aid Projects, February 1, 1977, Revised July 1, 1978, Revised November 3, 1980, Revised April 15, 1981, Revised September 7, 1983, Revised October 15, 1998, and Revised January 1, 2005;

Federal-Aid Proposal (Notices to Prospective Federal-Aid Construction Contractors), September 29, 1975, and

Title 29 Parts 3 and 5

Non-Collusion Affidavit

**BUY AMERICA CERTIFICATE
FOR COMPLIANCE WITH TITLE 23 USC § 313
(For Procurement of Steel, Iron, or Manufactured Products)
(EXCLUDES ROLLING STOCK)**

**RIO REIMAGINED: 3RD STREET RIO SALADO BICYCLE/PEDESTRIAN BRIDGE
CONSTRUCTION MANAGER AT RISK SERVICES (READVERTISE)
PROJECT NO. ST87600140 RAISE**

(Complete form and submit with bid)

The Bidder/Proposer hereby certifies that it **will comply** with the requirements of Title 23 USC § 313 and the applicable regulations in 23 CFR Part 635.410.

Executed on _____, 2024, at _____,
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title

BUY AMERICA CERTIFICATE FOR NON-COMPLIANCE WITH TITLE 23 USC §. 313

The Bidder/Proposer hereby certifies that it **cannot comply** with the requirements of Title 23 USC § 313, but it may qualify for an exception pursuant to Title 23 USC § 313 and the regulations in 23 CFR 635.410.

Executed on _____, 2024, at _____,
(Date) (City) (State)

Typewritten or Printed Name Signature of Authorized Official Title

**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. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

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

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

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

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

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

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

2. Withholding (29 CFR 5.5)

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

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

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

- (1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (2) A contracting agency for its 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.

REQUIRED CONTRACT PROVISIONS:

BIDDING REQUIREMENTS AND CONDITIONS:

Suspension from Bidding:

The City may suspend any person and any subsidiary or affiliate of any person from further bidding to the City and from being a subcontractor to a contractor or supplier or otherwise participating in the work:

- (A) If that person or any officer, director, employee or agent of that person is convicted, in this State, of any other jurisdiction, of a crime involving any of the following elements or actions:
- (1) Entering into any contract, combination, conspiracy or other unlawful act in restraint of trade or commerce,
 - (2) Knowingly and willfully falsifying, concealing, or covering up a material fact by trick, scheme, or device,
 - (3) Making false, fictitious, or fraudulent statements or representations,
 - (4) Making or using a false writing or document knowing it to contain a false, fictitious, or fraudulent statement or entry.
 - (5) Misrepresentation or false statement on any application for bonding:
 - (6) Misrepresentation or false statement on any application for prequalification; or
- (B) If the City makes a finding of any of the above or finds that the contractor is not a Responsible Bidder or a Responsible Contractor.

Under this Subsection, a person means any individual, partnership, joint venture, corporation, association or other entity formed for the purpose of doing business as a contractor, subcontractor or supplier.

The signature of the bid proposal by a submitter constitutes the submitter's certification, under penalty of perjury under the laws of the United States, that the submitter, or any person associated therewith in the capacity of owner, partner, director, officer, principal investor, project director, manager, auditor, or any position involving the administration of federal funds, has not been, or is not currently, under suspension, debarment, voluntary exclusion or been determined ineligible by any federal agency within the past three years. Signature of the bid proposal also certifies, under penalty of perjury under the laws of the United States, that the submitter does not have a proposed debarment pending. In addition, signature of the bid proposal certifies that the submitter has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Any exceptions to the above paragraph shall be noted and fully described on a separate sheet and attached to the bid proposal.

Non-Collusion Certification:

Bidders making their submittal shall complete the "AFFIDAVIT BY CONTRACTOR CERTIFYING THAT THERE WAS NO COLLUSION IN BIDDING OF CONTRACT" form included within these project specifications. This form shall be executed by or on behalf of the person, firm, association of corporation submitting the bid, in the following form:

The bidder certifies that, pursuant to Subsection 112(c) of Title 23, United States Code, and Title 44, Chapter 10, Article 1 and Title 34, Chapter 2, Article 4 of the Arizona Revised Statutes, neither it nor anyone associated with the company, firm, corporation, or individual has, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of full competitive bidding in connection with the above referenced project.

SCOPE OF WORK:

Intent of Contract:

(A) COVENANT OF GOOD FAITH AND FAIR DEALING

This contract imposes an obligation of good faith and fair dealing in its performance and enforcement.

The Contractor and the City, with a positive commitment to honesty and integrity, agree to the following mutual duties:

- (1) Each will function within the laws and statutes applicable to their duties and responsibilities.
- (2) Each will assist in the other's performance.
- (3) Each will avoid hindering the other's performance.
- (4) Each will proceed to fulfill its obligations diligently.
- (5) Each will cooperate in the common endeavor of the contract.

(B) VOLUNTARY PARTNERING

The City of Phoenix Street Transportation Department intends to encourage the foundation of a cohesive partnership with the Contractor and its principal subcontractors and suppliers. This partnership will be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives are effective and efficient contract performance and completion within budget, on schedule, and in accordance with plans and Specifications.

This partnership will be bilateral in makeup, and participation will be totally voluntary.

To implement this partner initiative prior to starting work, the Contractor's management personnel and the City's Engineering Supervisor will initiate a partnering development session. Persons required to be in attendance will be the City's Engineering Supervisor and key project personnel; the prime Contractor's on-site project manager and key project personnel; and principal subcontractor and supplier representatives.

Follow-up workshops may be held periodically throughout the duration of the contract as agreed by the Contractor and the City.

The establishment of a partnership charter on a project will not change the legal relationship of the parties to the contract, nor relieve either party from any of the terms of the contract.

(C) VALUE ENGINEERING PROPOSALS

Value Engineering proposals may be submitted to the Engineer for modifying the plans, specifications, or other requirements of the contract for the sole purpose of reducing the total cost of construction without impairing in any manner the essential functions or characteristics of the project, including but not limited to service life, economy of operations, ease of maintenance, desired appearance, or design and safety standards.

After execution of the contract, a value engineering proposal may be recommended by the Contractor. A proposal may include modifications to the plans or specifications, construction phasing or procedures, or other contract requirements.

The Engineer reserves the right to make alterations to the contract, in accordance with MAG Specification Section 104.2.1. The Engineer will notify the Contractor in writing of any alterations to the contract. Such alterations shall not be eligible for inclusion in any value engineering initiatives or joint proposals.

A savings resulting solely from the elimination or reduction in quantity of a bid item will not be considered as a value engineering

proposal. A savings resulting from the elimination or reduction in quantity of a bid item specified as part of a value engineering proposal will be considered.

The Contractor shall identify a value engineering proposal as such, and it shall contain, at a minimum, the following:

- (A) A description of both the existing contract requirements for performing the work and the proposed changes.
- (B) All engineering drawings and computations necessary for a thorough and expeditious evaluation.
- (C) An itemization of the existing contract requirements that must be changed if the proposal is adopted, and a recommendation as to the manner in which the change should be made.
- (D) A detailed estimate of the cost of performing the work under the existing contract and under the proposed changes, including the cost of implementing the changes.
- (E) The contract items affected by the proposed changes and any variations in quantities resulting from the changes, and any new items not listed in the bid schedule.
- (F) An objective estimate of any effects the proposal will have on collateral costs to the City, costs of related items, and costs of maintenance and operation.
- (G) A statement as to the effect that the proposal will have on the time for the completion of the project.
- (H) A statement in which the Engineer and Contractor jointly establish an acceptable period of time for evaluation of the proposal, and execution of a supplemental agreement. Any delays or extensions must be jointly approved by the Engineer and Contractor, or such proposal shall be considered rejected.
- (I) A statement as to any contract time extension or time related costs which will be requested by the Contractor as a condition for implementing the proposed changes.

The City will not be liable for any delay in executing a supplemental agreement, nor for any failure to accept a value engineering proposal.

The Engineer will notify the Contractor in writing regarding acceptance or rejection of a proposal. The City's decision will be final.

If the value engineering proposal is accepted in whole or in part, the necessary contract modifications and contract price adjustments will be made by the execution of a supplemental agreement which will specifically state that it is executed pursuant to the provisions of this subsection. The City will be the sole judge of the acceptability of a proposal, and of the estimated net savings in construction costs from the adoption of all or any part of the proposal.

The Contractor shall not perform any work described in the value engineering proposal until a supplemental agreement incorporating the proposal has been executed, or until the Contractor has been given written approval by the Engineer. If the supplemental agreement has not been executed, or the Contractor has not been given written approval on or before the date jointly determined above in paragraph (H), the proposal shall be deemed rejected.

The executed supplemental agreement shall incorporate the changes in the plans, specifications, or other requirements of the contract which are necessary to permit the proposal, or such part of it which has been accepted, to be put into effect, and shall include any conditions upon which the City's approval thereof is based. The executed supplemental agreement shall also extend the time for the completion of the contract if, the extension was requested by the Contractor as a condition for implementing the proposal, and such an extension has been deemed warranted by the City.

The executed supplemental agreement shall also establish the estimated net savings in the cost of performing the work attributable to the value engineering proposal. In determining the net savings, the Engineer reserves the right to disregard the contract bid prices if, in the Engineer's judgement, such prices do not represent a fair measure of the value of the work to be

performed or deleted. The executed supplemental agreement shall provide that the Contractor be paid 50 percent of the estimated net savings amount. Administrative or construction engineering costs by the City will not be included in the determination of the estimated net savings. Changes in overhead costs by the Contractor resulting from the proposal, including related time reductions or extensions, shall not be allowed.

The amount specified to be paid to the Contractor in the executed supplemental agreement shall constitute full compensation to the Contractor for the value engineering proposal and the performance of the work thereof pursuant to the said supplemental agreement.

Upon acceptance of a value engineering proposal, any restrictions imposed by the Contractor on its use or on disclosure of the information shall become void, and the City thereafter shall have the right to use all or any part of the proposal without obligation or compensation of any kind to the Contractor.

ALTERATION OF WORK:

Suspensions of Work Ordered by the Engineer:

If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the engineer in writing a request for adjustment within seven calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

CONTROL OF WORK:

Claims:

(A) Notice of Claim:

It is the purpose of this subsection that claims for additional compensation and any difference between the parties arising under and by virtue of the contract be brought to the attention of the Engineer at the earliest possible time and at the first responsible level to increase the possibility for such matters to be resolved or for appropriate action to be taken promptly. This section shall be construed to apply to all claims including, but not limited to, claims based on contract clauses as well as claims based on breach of contract or tort.

In the event any basis for additional compensation or time extension is perceived by the Contractor to have occurred, the Contractor shall give the Engineer immediate oral or written notice of such basis for additional compensation or time extension for the earliest possible decision, instruction, notice or action duly taken by the Engineer.

Should the Contractor disagree with any decision, order, instruction, notice, act or omission of the Engineer, the Contractor may submit a Notice of Claim to the Engineer. The Notice of Claim shall be submitted in writing within three working days after the Contractor has learned of the Engineer's action regarding the occurrence or event and before the Contractor begins the work on which he/she based the claim. For projects on which the voluntary partnering process is followed, and the Contractor elects to file

a claim, the Notice of Claim shall be submitted within three working days after the completion of the issue resolution process.

The Notice of Claim shall indicate, insofar as possible, the basis and the nature of the claim. If notification is not given, the Contractor hereby agrees to waive any claim for additional compensation. Within a 10-day period from the submission of the Notice of Claim, the Contractor shall submit in writing a projection of the Contractor's additional costs resulting from the alleged incident. Such costs shall include both present and future costs resulting from the alleged incident.

At the time the Contractor gives written notice of his/her claim, the Contractor shall immediately begin to keep and maintain complete and specific records to the extent possible, including but not limited to, cost records concerning details of the perceived claim.

The Contractor shall give the Engineer access to any such records and, when so requested, shall furnish the Engineer copies of claim documentation.

Unless otherwise agreed to in writing, the Contractor shall continue with and carry on the work and progress during the pendency of any claim, dispute, decision or determination by the Engineer, and any mediation or arbitration proceedings, and the City will continue to make progress payments to the Contractor in accordance with the contract documents.

(B) Submission of Claims:

As promptly as possible following the submission of a Notice of Claim in accordance with Subsection (A) of this section, but in no event later than 30 calendar days after all of the Contractor's costs have been incurred, the Contractor shall submit his/her claim to the Engineer concerning the matter so noticed.

The claim shall set forth clearly and in detail, for each item of additional compensation or extension of time requested, the reasons for the claim, references to applicable provisions of the specifications, the nature and the specific cost ascribed to each element of the claim or for each period of time involved, the basis used in ascribing each such element of cost or for each such period of time, and all other pertinent factual data.

The Contractor shall, insofar as it is possible to do so, promptly furnish any clarification and additional information or data deemed necessary and requested in writing by the Engineer.

(C) Decision on Claims:

The Engineer will make a written decision in relation to any claim presented by the Contractor within the following time frames:

- (1) For an adjustment in compensation, or other contractual dispute between the parties where the amount in controversy is \$200,000.00 or less, 30 calendar days from receipt of the Contractor's claim;
- (2) For an adjustment in compensation or other contractual dispute between the parties where the amount in controversy is more than \$200,000.00, 60 calendar days from receipt of the Contractor's claim.

Unless the Contractor and the Engineer otherwise stipulate in writing to a later time, if the Engineer does not make a decision or determination within the time frames prescribed in this subsection, the claim shall be deemed denied and the Contractor may proceed with the legal remedy prescribed herein.

The decision of the Engineer in relation to the Contractor's claim shall be final unless the Contractor commences arbitration or litigation as follows:

- (1) Where the amount in controversy is \$200,000.00 or less, the Contractor's sole legal remedy shall be arbitration.
- (2) Where the amount in controversy is more than \$200,000.00, the Contractor shall initiate litigation within twelve months after the cause of action accrues as prescribed in Section 12-821 of the Arizona Revised Statutes.

(D) Mediation:

If the Contractor is not satisfied with the decision of the Engineer, and prior to filing for arbitration or litigation, the Contractor may request a non-binding mediation by filing a request for mediation in writing with the Engineer. The Engineer will then arrange for a mutually agreeable mediator. Such request for mediation shall be made within 30 calendar days from actual receipt of the Engineer's decision as provided for in this section.

In connection with the mediation, each party shall bear its own costs, and any fees and expenses assessed by the mediator shall be borne equally by the parties.

(E) Arbitration of Claims and Disputes:

- (1) If the Contractor elects to invoke his/her right to arbitration, the Contractor shall file a Demand for Arbitration in writing with the American Arbitration Association, United States Arbitration and Mediation of Arizona, or any equivalent arbitration service, and serve a copy thereof upon the Engineer. Such Demand for Arbitration shall be made by claimant within 30 calendar days measured from actual receipt of the Engineer's decision unless a mediation process is already underway, in which case the Demand for Arbitration shall be made within 30 days of the termination of the mediation process. The scope of the arbitration proceeding shall be restricted and limited to the matters presented to the Engineer upon which the decision or determination was made and shall include no other matters. All arbitration of claims shall be conducted in Phoenix, Arizona in accordance with the rules of the arbitration service hearing the dispute.
- (2) The decision or award of the arbitrator shall be supported by substantial evidence and, in writing, contain the basis for the decision or award and findings of fact. The decision or award by the arbitrator when made shall be final and non-appealable except as provided in Section 12-1512, Arizona Revised Statutes. Both the Contractor and the Engineer shall be bound by the Arbitration Award for all purposes and judgment may be entered upon it in accordance with applicable law in the Superior Court of Arizona in and for the County of Maricopa.
- (3) For the purposes of this section, a claim for adjustment in compensation shall mean an aggregate of operative facts that give rise to the rights that the Contractor seeks to enforce. That is to say, a claim under this section is defined as the event, transaction or set of facts that give rise to a claim for compensation, costs or expenses or damages which do not exceed \$200,000.00 in amount.

In making a determination whether the amount in controversy is \$200,000.00 or less, the parties shall not consider, quantify or take into account any requested extensions of contract time, or the release or remission of liquidated damages previously assessed.

- (4) Any contractor having a claim, adjustment or dispute for an amount in excess of \$200,000.00 may waive or abandon the dollar amount of any such claim in excess of \$200,000.00 so as to bring the claim, adjustment or dispute within the scope and coverage of this section, provided that the amount allowed to any such contractor by the arbitration award shall not exceed \$200,000.00. Various damages claimed by the Contractor for a single claim may not be divided into separate proceedings to create claims within the \$200,000.00 limit.
- (5) The claim shall be submitted to a single arbitrator who shall be selected by the parties from a list of arbitrators furnished by the arbitration service. Each party shall alternately strike names from the list until only one name remains. The person whose name thus remains on the list of arbitrators is their first choice but if that person is not available to serve, the two persons whose names were last stricken are acceptable, with the one whose name was last stricken being the first alternate.
- (6) Unless agreed to otherwise, the parties shall select the arbitrator within ten calendar days after each has received a copy of the list of arbitrators.
- (7) Each party to the arbitration shall bear its own costs and any other cost and fees assessed shall be divided equally between the parties to the arbitration.

CONTROL OF MATERIAL:

(A) Source of Supply and Quality Requirements:

Whenever water is required on a project, as part of either a process or a product, it shall be free of contaminants which, in the judgment of the Engineer, constitute a health hazard to those individuals employed on the project and to the general public.

Untreated effluent shall not be utilized in any aspect of the work.

(B) Certificates:

1. General:

The Contractor shall submit to the Engineer an original or copy of either a Certificate of Compliance or a Certificate of Analysis, as required, prior to the use of any materials or manufactured assemblies for which these specifications or the special provisions require that such a certificate be furnished.

The Engineer may permit the use of certain materials or manufactured assemblies prior to, or without, sampling and testing if accompanied by a Certificate of Compliance or Certificate of Analysis, as herein specified. Materials or manufactured assemblies for which a certificate is furnished may be sampled and tested at any time, and, if found not in conformity with the requirements of the plans and the specifications, will be subject to rejection, whether in place or not.

Certificates shall comply with the requirements specified herein.

2. Certificate of Compliance:

A Certificate of Compliance shall be submitted on the manufacturer's or suppliers' official letterhead, and contain the following information:

- (1) The name, address and phone number of the manufacturer or supplier of the material.
- (2) A description of the material supplied.
- (3) Quantity of material represented by the certificate.
- (4) Means of material identification, such as label, lot number, or marking.
- (5) Statement that the material complies in all respects with the requirements of the cited specifications. Certificates shall state compliance to the specific cited specification, such as AASHTO M-194, ASTM A-588; or specific table or section of the MAG Uniform Standard Specifications, City of Phoenix Supplement to MAG, or Special Provisions. Certificates may cite all, if applicable.
- (6) A statement that the individual identified in item seven below has the legal authority to bind the manufacturer or the supplier of the material.
- (7) The name, title, and signature the responsible individual. The date of the signature shall also be given.

Each of the first six items specified above shall be completed prior to the signing as defined in item seven. No certificate will be accepted that has been altered, added to, or changed in any way after the authorized signature has been affixed to the original certificate. However, notations of a clarifying nature, such as project number, contractor, or quantity shipped are acceptable, provided the basic requirements of the certificate are not affected.

A copy or facsimile reproduction (FAX) will be acceptable; however, the original certificate shall be made available upon request.

3. Certificate of Analysis:

A Certificate of Analysis shall include all the information required in a Certificate of Compliance and, in addition, shall include the results of all tests required by the specifications.

(C) Domestic Materials:

Buy America

Steel and iron materials and products used on all projects shall comply with the current "Buy America" requirements of 23 CFR 635.410.

All manufacturing processes to produce all steel and iron products used on this project shall occur in the United States. Raw materials used in manufacturing the steel and iron products may be foreign or domestic. Steel or iron not meeting these requirements may be used in products on this project provided that the invoiced cost to the Contractor for such steel products incorporated into the work does not exceed either one-tenth of one percent of the total (final) contract cost or \$2,500, whichever is greater.

Any process which involves the application of a coating to iron or steel shall occur in the United States. These processes include epoxy coating, galvanizing, painting, or any other coating which protects or enhances the value of covered material.

The requirements specified herein shall only apply to steel and iron products permanently incorporated into the project. "Buy America" provisions do not apply to temporary steel items, such as sheet piling, temporary bridges, steel scaffolding and falsework, or to materials which remain in place at the contractor's convenience.

Certificates of Compliance, conforming to the requirements of these Specifications, will accompany each shipment of material that includes steel or iron products and will be submitted to the Engineer prior to its use. The Certificates of Compliance must state that the steel or iron products utilized on the project meets the requirements specified herein and shall also certify that all manufacturing processes to produce steel or iron products, and any application of a coating to iron or steel, occurred in the United States.

Convict-produced materials may not be used unless the materials were produced prior to July 1, 1991 at a prison facility specifically producing convict-made materials for Federal-aid construction projects.

(D) Procurement of Recovered Materials:

Contractor and subcontractors agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 C.F.R. Part 247. In the performance of this Contract and to the extent practicable, the Contractor and subcontractors are to use of products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 C.F.R. Part 247 whenever:

1. The Contract requires procurement of \$10,000 or more of a designated item during the fiscal year or,
2. The Contractor has procured \$10,000 or more of a designated item using federal funding during the previous fiscal year.

Contractor and Subcontractors will be responsible for reviewing EPA's website, including the Comprehensive Procurement Guidelines for Construction Products, for the most updated information under 40 C.F.R Part 247. Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the Contractor can demonstrate the item is:

1. Not reasonably available within a timeframe providing for compliance with the Contract performance schedule;
2. Fails to meet reasonable contract performance requirements; or
3. Is only available at an unreasonable price.

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC:

(A) Sanitary, Health, and Safety Provisions:

Occupational Safety and Health Standards shall apply at all times. The Contractor shall have, in accordance with OSHA requirements, Material Safety Data Sheets (MSDS) available for all applicable materials stored or utilized on the project. Should the Contractor fail to follow OSHA regulations, the Engineer may suspend the work by written notice until compliance has been achieved. Any such failure to comply with OSHA regulations shall constitute waiver of any right to claim for such suspended work. If regulations are in conflict, the more strict regulation will apply.

(B) Public Convenience and Safety:

The Contractor shall abide by all OSHA 29 CFR Part 1926 and 29 CFR Part 1910 Regulations, as well as all applicable standards of the Environmental Protection Agency (EPA), the Arizona Department of Environmental Quality (ADEQ), and the Mine Safety and Health Administration (MSHA). The Contractor shall maintain a copy of the specified OSHA Standards on the construction site at all times.

The Contractor shall submit a Safety Plan at the preconstruction conference. The Safety Plan shall specify the procedures the Contractor will implement to satisfy OSHA and any state occupational safety guidelines related to the worker as well as the public in the construction of excavations, structures and confined air spaces along with all other activities involved in the project. The Engineer will review the Safety Plan within 10 working days and identify any additional elements of the project to be included. The Contractor shall then modify the Safety Plan, if necessary, for re-submittal to the Engineer within 5 working days. The Contractor shall not commence work until the Safety Plan has been approved, unless authorized by the Engineer.

The safety plan shall include a list of emergency procedures, phone numbers, and methods of communication for medical facilities, Police, Fire Department, and other emergency services which may become necessary. The Contractor shall be responsible for providing First Aid treatment and medical supplies on the project site, in accordance with OSHA 29 CFR Part 1910, and for producing and maintaining records of any injury-related incidents. The Safety Plan shall include the requirement that all workers must wear OSHA approved hard hats, reflective safety vests or other approved high visibility warning garments, work shoes, and, when appropriate, safety glasses while in construction areas. The Engineer and Project Superintendent shall each ensure that their visitors comply with the above requirements as appropriate.

The Contractor shall designate a competent person as Safety Supervisor to be responsible for implementation of the Safety Plan throughout the contract period. The competent person shall be capable of identifying existing and predictable hazards in the surroundings, or working conditions which are unsanitary, hazardous, or dangerous to employees, and have authority to take prompt corrective measures to eliminate them. The Safety Supervisor shall also conduct safety meetings, oversee and maintain safe job-site conditions, and ensure that emergency procedures, phone numbers, and all applicable OSHA notification posters are conspicuously placed in all work areas.

The Safety Supervisor shall maintain records demonstrating that all workers have sufficient experience to operate their equipment, and have been instructed in the proper operation of the equipment. The Safety Supervisor shall furnish evidence that crane operators have been instructed in accordance with the requirements of OSHA 29 CFR Part 1926.550 Subpart N, and 1926.955 Subpart V.

(C) Damage by Storm, Flood, or Earthquake:

Damage by Storm, Flood, or Earthquake: Attention is directed to MAG Section 107.10, "Contractor's Responsibility for Work". In the event damage to the work is caused by a storm, flood, or earthquake which constitutes an "Occurrence," as hereinafter defined, the provisions of this Section shall be applicable and the Contractor may apply in writing to the Engineer for the City to pay or participate in the cost of repairing damage to the work from such cause or, in lieu thereof, and at the sole discretion of the Department/City, terminate the contract and relieve the Contractor of further obligation to perform the work, subject to the following:

1. Occurrence:

"Occurrence" shall include tornadoes; earthquakes in excess of a magnitude of 3.5 on the Richter Scale; and storms and floods for which the Governor has proclaimed a state of emergency, when the damaged work is located within the territorial limits to which such proclamation is applicable; or which were a catastrophic, unusual, sudden, and unforeseeable manifestation of the forces of nature, the effect of which could not have been prevented or minimized by reasonable human foresight and effort.

2. Application by Contractor:

The Contractor shall immediately begin performing emergency work necessary to provide for the safety and passage of public traffic, and such other emergency work necessary to mitigate damages to the facilities. The Contractor's written request for the City to pay or to participate in the cost of rebuilding, repairing, restoring or otherwise remedying the damage to the work caused by the occurrence shall be submitted to the Engineer. The repair work may begin prior to authorization by the Engineer, but the Contractor shall keep accurate costs of all such work performed.

3. Repair Work:

Repair of damaged work under the provisions of this subsection shall be pursuant to a supplemental agreement issued hereunder and specifying the repair work to be performed on the damaged facility. Such repair work shall consist of restoring the in-place construction (for the purposes of this subsection erected falsework and formwork shall be considered in-place construction) to the same state of completion to which such work had advanced prior to the Occurrence. Emergency work which the Engineer determines would have been part of the repair work if it had not previously been performed, will be considered to be part of said repair work. The City reserves the right to make changes in the plans and specifications applicable to the portions of the work to be repaired, and if such changes will increase the cost of repairing the damage over the Engineer's estimate of the cost of repair without the changes, the Contractor will be paid for such increased costs in accordance with Subsection 4 below.

Nothing in this section shall be construed to relieve the Contractor of full responsibility for the risk or injury, loss or damage to materials not yet incorporated in the work and to materials, tools, and equipment (except erected falsework and formwork) used to perform the work, nor to relieve the Contractor of his liability. The City will be responsible for any portion of the work accepted by the Engineer in accordance with MAG Section 105.15, and the Supplementary Conditions section, "MAG SUBSECTION 105.15(B) FINAL ACCEPTANCE" contained herein.

4. Determination of Costs:

Unless otherwise agreed between the Engineer and the Contractor, the cost of the work performed pursuant to this Section will be determined in accordance with an approved contract change order. The cost of emergency work, which the Engineer determines would have been part of the repair work if it had not previously been performed will be determined in the same manner as the authorized repair work. The cost of superintendence and other documented direct project costs associated with recovering the site, including idled equipment, remobilization costs and project office overhead shall be included in the cost of emergency and repair work. No payment shall be made for home office overhead.

5. Payment for Repair Work:

The City will pay the cost of the repair work as determined in Subsection 4.

6. Termination of Contract:

If the City elects to terminate the contract, the termination and the determination of the total compensation payable to the Contractor shall be governed by the provisions of MAG Section 108.11- Termination of Contract.

PROVIDE ON-THE-JOB TRAINING:

The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification

involved.

The number of trainees to be trained under this project shall be at least 0, and the required number of training hours shall be 0; however, the Contractor shall make every possible effort to provide additional trainees with training and shall see that all trainees are afforded every opportunity to participate in as much training as is practically possible to provide. Due to turnover and attrition of trainees in any single trainee slot, it is expected that continuous trainee replacements may be necessary during the contract work period.

In the event that a Contractor subcontracts a portion of the contract work, he shall determine how many, if any, of the trainees are to be trained by the subcontractor, provided, however, that the Contractor shall retain the primary responsibility for meeting the training requirements imposed by this special provision. The Contractor shall also insure that this training special provision is made applicable to such subcontract. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training.

The number of trainees shall be distributed among the work classifications on the basis of the Contractor's needs and the availability of journeymen in the various classifications within a reasonable area of recruitment. Prior to commencing construction, the Contractor shall submit to the City for approval, the number of trainees to be trained in each selected classification and training program to be used. Furthermore, the Contractor shall specify the starting time for training in each of the classifications. The Contractor will be credited for each trainee employed by him on the contract work who is currently enrolled or becomes enrolled in an approved program and will be reimbursed for such trainees as provided hereinafter.

Training and upgrading of minorities and women toward journeyman status is a primary objective of this Training Special Provision. Accordingly, the Contractor shall make every effort to enroll minority trainees and women (e.g., by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees) to the extent that such persons are available within a reasonable area of recruitment. The Contractor will be responsible for demonstrating the steps that he has taken in pursuance thereof, prior to a determination as to whether the Contractor is in compliance with this Training Special Provision. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

No employee shall be employed as a trainee in any classification in which he has successfully completed a training course leading to journeyman status or in which he has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.

The minimum length and type of training for each classification will be as established in the training program selected by the Contractor and approved by the City and the Federal Highway Administration. The City and the Federal Highway Administration will approve a program if it is reasonably calculated to meet the equal employment opportunity obligations of the Contractor and to qualify the average trainee for journeyman status in the classification concerned by the end of the training period. Furthermore, Apprenticeship programs registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau and training programs approved but not necessarily sponsored by the U.S. Department of Labor, Bureau of Apprenticeship and Training will also be considered acceptable provided they are being administered in a manner consistent with the equal employment obligations of Federal-aid highway construction contracts. Specifically, union apprenticeship programs, Associated Builders and Contractor's apprenticeship program and Associated General Contractor's Arizona Training program may be used. Additionally, in-house training programs are approved on a case-by-case basis. Approval or acceptance of a training program shall be obtained from the City prior to commencing work on the classification covered by the program. It is the intention of these provisions that training is to be provided in the construction crafts rather than clerk-typists or secretarial-type positions. Training is permissible in lower level management positions such as office engineers, estimators, timekeepers, etc., where the training is oriented toward construction applications. Training in the laborer classification may be permitted provided that significant and meaningful training is provided and approved by the Federal Highway Administration. Some off site training is permissible as long as the training is an integral part of an approved training program and does not comprise a significant part of the overall training.

Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given an employee on this contract in accordance with an approved training program. As approved by the Engineer, reimbursement will be made for training

persons in excess of the number specified herein. This reimbursement will be made even though the Contractor receives additional training program funds from other sources, provided such other source does not specifically prohibit the Contractor from receiving other reimbursement. Reimbursement for off-site training indicated above may only be made to the Contractor where he contributes to the cost of the training, provides the instruction to the trainee or pays the trainee's wages during the off site training period.

No payment will be made to the Contractor if either the failure to provide the required training, or the failure to hire the trainee as a journeyman, is caused by the Contractor and evidences a lack of good faith on the part of the Contractor in meeting the requirements of this Training Special Provision. It is normally expected that a trainee will begin his training on the project as soon as feasible after start of work utilizing the skill involved and remain on the project as long as training opportunities exist in his work classification or until he has completed his training program. However, when such training opportunities are suspended or interrupted under the contract which the trainee was designated, the Contractor may continue training under other contracts regardless of their funding, except that no reimbursement for such training shall be made on non-federal aid contracts, under this training special provision. It is not required that all trainees be on board for the entire length of the contract. A Contractor will have fulfilled his responsibilities under this Training Special Provision if he has provided acceptable training to the number of trainees specified. The number trained shall be determined on the basis of the total number enrolled on the contract for a significant period.

Trainees will be paid at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent of the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the Departments of Labor or Transportation in connection with the existing program will apply to all trainees being trained for the same classification who are covered by this Training Special Provision.

The Contractor shall furnish the trainee a copy of the program he will follow in providing the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

The Contractor shall provide for the maintenance of records and furnish periodic reports documenting his performance under this Training Special Provision.

The Contractor shall submit a weekly training report to the Engineer. The report shall be prepared on forms obtained from the City of Phoenix Equal Opportunity Department, Business Relations Division, 200 W. Washington Street, 15th Floor, Phoenix, AZ 85003.

At the preconstruction conference, the Contractor shall submit a schedule which will indicate each trainee's name, social security number, sex, race/ethnicity, the program in which the trainee is enrolled, the approximate number of hours each trainee will be trained in each phase of the work, the crafts to which the trainees belong and the estimated period of time that they will be employed as trainees. A supplemental schedule shall be submitted to the Engineer when a revision in the original schedule is necessary. At the time each trainee is scheduled to begin work, the Contractor shall submit to the Engineer each trainee's name, social security number, sex, and race/ethnicity. The Contractor must also submit proof that the trainee is enrolled in an approved training program.

At the conclusion of the project or at the end of each calendar year for multi-year projects, the Contractor must submit to the City of Phoenix Equal Opportunity Department (via the Engineer), the same information described hereinbefore for each trainee that worked on the project. Additionally, the Contractor must indicate if the trainee graduated from the program, was terminated due to cause, or was transferred to another project to continue his/her training.

If, at the preconstruction conference, the Contractor does not provide a schedule containing the specified information, the Engineer will notify the Contractor of the infraction. Failure to provide the schedule within 15 calendar days from the date of notification shall be considered as willful non-compliance. The Engineer will cause to be withheld from the Contractor's monthly payments additional retainage in the amounts specified below. The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted.

The Engineer will monitor the use of trainees based on the Contractor's schedule, supplemental schedules, and weekly training report. If the use of trainees is not in conformance with the schedule or supplemental information, the Engineer will cause to be

withheld from the Contractor's monthly payments additional retainage in the amounts specified below. Conformance with the schedule will be considered acceptable when the cumulative number of trainee hours earned to date under the bid item, PROVIDE ON THE JOB TRAINING is at least 90 percent of that shown on the schedule, for the work performed to date.

ADDITIONAL RETAINAGE

First and Second monthly payments following infraction: \$1,000.00 each month

Third monthly payment and thereafter: \$5,000.00 each month

The amount withheld from the monthly payment shall be held until an acceptable schedule or supplemental schedule has been submitted and until conformance with the schedule has been determined.

If, at the completion of the contract, the City is holding additional retainage in accordance with this specification, the retainage will become the property of the City, not as penalty but as liquidated damages.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION:

The Contractor shall complete the "Information Furnished Pursuant to the NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)" form (copy included in this Federal Requirement section of these Special Provisions), and submit it to the Engineer at the pre-construction meeting. This form will be filed with the U.S. Department of Labor by the City of Phoenix.

NOTICE OF REQUIREMENT FOR CARGO ACT OF 1954:

The Federal Highway Administration (FHWA) in partnership with the Federal Maritime Administration has mandated the implementation of 46 CFR 381 making the requirements of the Cargo Preference Act (CPA) applicable to the Federal Aid Highway Program.

The requirements apply to items transported by ocean vessel.

The requirements of 46 CFR 381 apply to materials or equipment acquired for a specific federal-aid highway project. In general, the requirements are not applicable to goods or materials that come from inventories independent of FHWA-funded contracts.

Information related to the CPA is presented in "Cargo Preference Requirements – Questions and Answers" available from the FHWA at <https://www.fhwa.dot.gov/construction/cgit/cargo/ga.cfm>.

The Contractor shall comply with the requirements of the Cargo Preference Act 46 CFR 381.7(a)-(b). By executing a construction contract for this project, the Contractor 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.
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 the paragraph above to both the Engineer and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

**INFORMATION FURNISHED PURSUANT TO THE NOTICE OF
REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)
Set Forth in Paragraph 3 in Federal Register,
Vol. 43, No. 68**

CITY OF PHOENIX PROJECT NO: ST87600140 RAISE
FEDERAL AID NO.: NONE
ADOT TRACS NO.: NONE
PROJECT DESCRIPTION: Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian
Bridge 2-Step Construction Manager At Risk Services (READVERTISE)
LOCATION: Across Rio Salado between Central Ave. and 7th St.

Contractor Identification Number (as used on U.S. Treasury Department Form 941): Name _____

and Address of Contractor: _____

Telephone Number: _____

Amount of Contract: _____

Estimated Starting Date: _____

Estimated Completion Date: _____

Geographical Area: **State of Arizona**

(County)

(City)

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
EXECUTIVE ORDER 11246, July 1, 1978 (Revised November 3, 1980)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer Identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetable.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications. Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken

with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason hereof, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written to minority, female and

community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligation under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors; adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation

which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form;

however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)**

JULY 1, 1978 (Revised November 3, 1980)

(Revised April 15, 1981)

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

	<u>Minority</u>	<u>Female</u>
Tucson and balance of Pima County	24.1	6.9
Cochise, Graham, Greenlee and Santa Cruz Counties	27.0	6.9
Phoenix and balance of Maricopa County	15.8	6.9
Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai and Yuma Counties	19.6	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in all areas where he has Federal or federally assisted work.

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

FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID CONSTRUCTION CONTRACTORS

1. CERTIFICATION OF NONSEGREGATED FACILITIES

- a. A certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).
- b. Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employee facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.
- c. Bidders receiving Federal-aid highway construction contract awards exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or materials supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

2. NOTICE TO PROSPECTIVE SUBCONTRACTORS AND MATERIAL SUPPLIERS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES

- a. A Certification of Nonsegregated Facilities as required by the May 9, 1967, Order of the Secretary of Labor (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clauses.

- b. Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.
- c. Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and materials suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

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

By signing this bid, the bidder will be deemed to have stipulated as follows:

- a. That any facility to be utilized in the performance of this contract, unless such contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1957 et seq., as amended by Pub. L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR, Part 15), is not listed on the U.S. Environmental Protection 40 CFR 15.20.
- b. That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

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

1. As used in these specifications:

a. “Covered area” means the geographical area described in the solicitation from which this contract resulted;

b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. “Minority” includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to [41 CFR 60-4.5](#)) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and

to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations

when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment

needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under [41 CFR part 60-3](#).

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with [41 CFR 60-4.8](#).

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246)**

JULY 1, 1978 (Revised November 3, 1980)

(Revised April 15, 1981)

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

	<u>Minority</u>	<u>Female</u>
Tucson and balance of Pima County	24.1	6.9
Cochise, Graham, Greenlee and Santa Cruz Counties	27.0	6.9
Phoenix and balance of Maricopa County	15.8	6.9
Apache, Coconino, Gila, Mohave, Navajo, Pinal, Yavapai and Yuma Counties	19.6	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in all areas where he has Federal or federally assisted work.

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

**EQUAL EMPLOYMENT OPPORTUNITY
COMPLIANCE REPORTS**

(Project, Training and Annual)

Federal-Aid Projects

February 1, 1977; Revised July 1, 1978; Revised November 3, 1980
Revised April 15, 1981; Revised September 7, 1983; Revised October 15, 1998;
Revised August 1, 2005; Revised March 1, 2015;
Revised October 20, 2015

ANNUAL REPORT:

For each contract in the amount of \$10,000 or more, and for each subcontract regardless of tier not including material suppliers, in the amount of \$10,000 or more, the contractor and each subcontractor regardless of tier shall submit an annual Equal Employment Opportunity (EEO) Report containing all the information required on Form FHWA -1391.

The staffing figures to be reported should represent the project workforce on board in all or any part of the last payroll period preceding the end of July.

The report shall be submitted no later than September 1 to the agency (contract owner) compliance officer.

This content is from the eCFR and is authoritative but unofficial.

Title 29 – Labor

Subtitle A – Office of the Secretary of Labor

Part 3 Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States

- § 3.1 Purpose and scope.
- § 3.2 Definitions.
- § 3.3 Certified payrolls.
- § 3.4 Submission of certified payroll and the preservation and inspection of weekly payroll records.
- § 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.
- § 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.
- § 3.7 Applications for the approval of the Secretary of Labor.
- § 3.8 Action by the Secretary of Labor upon applications.
- § 3.9 Prohibited payroll deductions.
- § 3.10 Methods of payment of wages.
- § 3.11 Regulations part of contract.

PART 3—CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES

Authority: R.S. 161, sec. 2, 48 Stat. 848; Reorg. Plan No. 14 of 1950, 64 Stat. 1267; 5 U.S.C. 301; 40 U.S.C. 3145; Secretary's Order 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

Source: 29 FR 97, Jan. 4, 1964, unless otherwise noted.

§ 3.1 Purpose and scope.

This part prescribes “anti-kickback” regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 3145), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 of 1950 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours and Safety Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the

wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

[88 FR 57728, Aug. 23, 2023]

§ 3.2 Definitions.

As used in the regulations in this part:

Affiliated person. The term “affiliated person” includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

Agency. The term “agency” means any Federal, State, or local government agency or instrumentality, or other similar entity, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, for a project subject to the Davis-Bacon labor standards, as defined in § 5.2 of this subtitle.

(1) **Federal agency.** The term “Federal agency” means an agency or instrumentality of the United States or the District of Columbia, as defined in this section, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards.

(2) [Reserved]

Building or work. The term “building or work” generally includes construction activity of all types, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The term includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, solar panels, wind turbines, broadband installation, installation of electric car chargers, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The term “building or work” also includes a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work.

(1) **Building or work financed in whole or in part by loans or grants from the United States.** The term “building or work financed in whole or in part by loans or grants from the United States” includes any building or work for which construction, prosecution, completion, or repair, as defined in this section, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes any building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(2) [Reserved]

Construction, prosecution, completion, or repair. The term “construction, prosecution, completion, or repair” mean all types of work done on a particular building or work at the site thereof as specified in § 5.2 of this subtitle, including, without limitation, altering, remodeling, painting and decorating, installation on the site

of the work of items fabricated offsite, covered transportation as reflected in § 5.2, demolition and/or removal as reflected in § 5.2, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, performed by laborers and mechanics at the site.

Employed (and wages). Every person paid by a contractor or subcontractor in any manner for their labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by assistance from the United States through loan, grant, loan guarantee or insurance, or otherwise, is "employed" and receiving "wages", regardless of any contractual relationship alleged to exist between the contractor and such person.

Public building (or public work). The term "public building (or public work)" includes a building or work the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of or with funds of a Federal agency to serve the general public regardless of whether title thereof is in a Federal agency. The construction, prosecution, completion, or repair of a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work, may still be considered a public building or work, even where the entire building or work is not owned, leased by, or to be used by the Federal agency, as long as the construction, prosecution, completion, or repair of that portion of the building or work, or the installation (where appropriate) of equipment or components into that building or work, is carried on by authority of or with funds of a Federal agency to serve the interest of the general public.

United States or the District of Columbia. The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, and any corporation for which all or substantially all of the stock of which is beneficially owned by the United States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[88 FR 57729, Aug. 23, 2023]

§ 3.3 Certified payrolls.

- (a) [Reserved]
- (b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, each week must provide a copy of its weekly payroll for all laborers and mechanics engaged on work covered by this part and part 5 of this chapter during the preceding weekly payroll period, accompanied by a statement of compliance certifying the accuracy of the weekly payroll information. This statement must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and must be on the back of Form WH-347, "Payroll (For Contractors Optional Use)" or on any form with identical wording. Copies of WH-347 may be obtained from the contracting or sponsoring agency or from the Wage and Hour Division website at <https://www.dol.gov/agencies/whd/government-contracts/construction/forms> or its successor site. The signature by the contractor, subcontractor, or the authorized officer or employee must be an original handwritten signature or a legally valid electronic signature.
- (c) The requirements of this section do not apply to any contract of \$2,000 or less.

- (d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[88 FR 57729, Aug. 23, 2023]

§ 3.4 Submission of certified payroll and the preservation and inspection of weekly payroll records.

- (a) **Certified payroll.** Each certified payroll required under § 3.3 must be delivered by the contractor or subcontractor, within 7 days after the regular payment date of the payroll period, to a representative at the site of the building or work of the agency contracting for or financing the work, or, if there is no representative of the agency at the site of the building or work, the statement must be delivered by mail or by any other means normally assuring delivery by the contractor or subcontractor, within that 7 day time period, to the agency contracting for or financing the building or work. After the certified payrolls have been reviewed in accordance with the contracting or sponsoring agency's procedures, such certified payrolls must be preserved by the agency for a period of 3 years after all the work on the prime contract is completed and must be produced for inspection, copying, and transcription by the Department of Labor upon request. The certified payrolls must also be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.
- (b) **Recordkeeping.** Each contractor or subcontractor must preserve the regular payroll records for a period of 3 years after all the work on the prime contract is completed. The regular payroll records must set out accurately and completely the name; Social Security number; last known address, telephone number, and email address of each laborer and mechanic; 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); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid. The contractor or subcontractor must make such regular payroll records, as well as copies of the certified payrolls provided to the contracting or sponsoring agency, available at all times for inspection, copying, and transcription by the contracting officer or their authorized representative, and by authorized representatives of the Department of Labor.

[88 FR 57730, Aug. 23, 2023]

§ 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

- (a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.
- (b) Any deduction of sums previously paid to the laborer or mechanic as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

- (c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.
- (d) Any deduction constituting a contribution on behalf of the laborer or mechanic employed to funds established by the contractor or representatives of the laborers or mechanics, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of the laborers or mechanics, their families and dependents: *Provided, however,* That the following standards are met:
 - (1) The deduction is not otherwise prohibited by law;
 - (2) It is either:
 - (i) Voluntarily consented to by the laborer or mechanic in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment; or
 - (ii) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its laborers or mechanics;
 - (3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and
 - (4) The deductions must serve the convenience and interest of the laborer or mechanic.
- (e) Any deduction requested by the laborer or mechanic to enable him or her to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (f) Any deduction voluntarily authorized by the laborer or mechanic for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.
- (g) Any deduction voluntarily authorized by the laborer or mechanic for the making of contributions to charitable organizations as defined by 26 U.S.C. 501(c)(3).
- (h) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: *Provided, however,* That a collective bargaining agreement between the contractor or subcontractor and representatives of its laborers or mechanics provides for such deductions and the deductions are not otherwise prohibited by law.
- (i) Any deduction not more than for the "reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and 29 CFR part 531. When such a deduction is made the additional records required under 29 CFR 516.25(a) must be kept.
- (j) Any deduction for the cost of safety equipment of nominal value purchased by the laborer or mechanic as their own property for their personal protection in their work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the contractor, if such deduction does not violate the Fair Labor Standards Act or any other law, if the cost on which the deduction is based does not exceed the actual cost to the contractor where the equipment is purchased from the contractor and does not include any direct or indirect monetary return to the contractor where the equipment is purchased from a third person, and if the deduction is either:

- (1) Voluntarily consented to by the laborer or mechanic in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or
- (2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its laborers and mechanics.

[88 FR 57730, Aug. 23, 2023]

§ 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under § 3.5. The Secretary may grant permission whenever he finds that:

- (a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;
- (b) The deduction is not otherwise prohibited by law;
- (c) The deduction is either
 - (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or
 - (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and
- (d) The deduction serves the convenience and interest of the employee.

§ 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under § 3.6 must comply with the requirements prescribed in the following paragraphs of this section:

- (a) The application must be in writing and addressed to the Secretary of Labor. The application must be submitted by email to dbadeductions@dol.gov, by mail to the United States Department of Labor, Wage and Hour Division, Director, Division of Government Contracts Enforcement, 200 Constitution Ave., NW, Room S-3502, Washington, DC 20210, or by any other means normally assuring delivery.
- (b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of § 3.6, and specifies any conditions which have changed in regard to the payroll deductions.
- (c) The application must state affirmatively that there is compliance with the standards set forth in the provisions of § 3.6. The affirmation must be accompanied by a full statement of the facts indicating such compliance.

- (d) The application must include a description of the proposed deduction, the purpose of the deduction, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.
- (e) The application must state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

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§ 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor will decide whether or not the requested deduction is permissible under provisions of § 3.6; and will notify the applicant in writing of the decision.

[88 FR 57731, Aug. 23, 2023]

§ 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under § 3.6 are prohibited.

§ 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

§ 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part must expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see § 5.5(a) of this subtitle. However, these requirements will be considered to be effective by operation of law, whether or not they are incorporated into such contracts, as set forth in § 5.5(e) of this subtitle.

[88 FR 57731, Aug. 23, 2023]

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Title 29 – Labor

Subtitle A – Office of the Secretary of Labor

Part 5 Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)

Subpart A Davis-Bacon and Related Acts Provisions and Procedures

§ 5.1 Purpose and scope.

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§ 5.17 [Reserved]

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§ 5.20 Scope and significance of this subpart.

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Subpart C Severability

§ 5.40 Severability.

PART 5—LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION (ALSO LABOR STANDARDS PROVISIONS APPLICABLE TO NONCONSTRUCTION CONTRACTS SUBJECT TO THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT)

Authority: 5 U.S.C. 301; Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix; 28 U.S.C. 2461 note; 40 U.S.C. 3141 et seq.; 40 U.S.C. 3145; 40 U.S.C. 3148; 40 U.S.C. 3701 et seq.; Secretary's Order No. 01-2014, 79 FR 77527; and the laws referenced by § 5.1(a).

Source: 48 FR 19541, Apr. 29, 1983, unless otherwise noted.

Subpart A—Davis-Bacon and Related Acts Provisions and Procedures

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to subpart A of part 5 appear at 61 FR 19984, May 3, 1996.

§ 5.1 Purpose and scope.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 (64 Stat. 1267, as amended, 5 U.S.C. appendix) and the Copeland Act (48 Stat. 948; 18 U.S.C. 874; 40 U.S.C. 3145) in order to coordinate the administration and enforcement of labor standards provisions contained in the Davis-Bacon Act (46 Stat. 1494, as amended; 40 U.S.C. 3141 et seq.) and its related statutes (“Related Acts”).

(1) A listing of laws requiring Davis-Bacon labor standards provisions can be found at www.dol.gov/agencies/whd/government-contracts or its successor website.

(2) [Reserved]

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its Related Acts.

[88 FR 57731, Aug. 23, 2023]

§ 5.2 Definitions.

Administrator. The term “Administrator” means the Administrator of the Wage and Hour Division, U.S. Department of Labor, or authorized representative.

Agency. The term “agency” means any Federal, State, or local government agency or instrumentality, or other similar entity, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards, as defined in this section.

(1) **Federal agency.** The term “Federal agency” means an agency or instrumentality of the United States or the District of Columbia, as defined in this section, that enters into a contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to a project subject to the Davis-Bacon labor standards.

(2) [Reserved]

Agency Head. The term “Agency Head” means the principal official of an agency and includes those persons duly authorized to act on behalf of the Agency Head.

Apprentice and helper. The terms “apprentice” and “helper” are defined as follows:

(1) “Apprentice” means:

- (i) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship; or
- (ii) A person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(3) A distinct classification of helper will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

- (i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;
- (ii) The use of such helpers is an established prevailing practice in the area; and
- (iii) The helper is not employed as a trainee in an informal training program. A “helper” classification will be added to wage determinations pursuant to § 5.5(a)(1)(iii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

Building or work. The term “building or work” generally includes construction activities of all types, as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The term includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, solar panels, wind turbines, broadband installation, installation of electric car chargers, plants, highways,

parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The term "building or work" also includes a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work.

Construction, prosecution, completion, or repair. The term "construction, prosecution, completion, or repair" means the following:

- (1) These terms include all types of work done—
 - (i) On a particular building or work at the site of the work, as defined in this section, by laborers and mechanics employed by a contractor or subcontractor, or
 - (ii) In the construction or development of a project under a development statute.
- (2) These terms include, without limitation (except as specified in this definition):
 - (i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated offsite;
 - (ii) Painting and decorating;
 - (iii) Manufacturing or furnishing of materials, articles, supplies or equipment, but only if such work is done by laborers or mechanics
 - (A) Employed by a contractor or subcontractor, as defined in this section, on the site of the work, as defined in this section, or
 - (B) In the construction or development of a project under a development statute;
 - (iv) "Covered transportation," defined as any of the following activities:
 - (A) Transportation that takes place entirely within a location meeting the definition of "site of the work" in this section;
 - (B) Transportation of one or more "significant portion(s)" of the building or work between a "secondary construction site" as defined in this section and a "primary construction site" as defined in this section;
 - (C) Transportation between an "adjacent or virtually adjacent dedicated support site" as defined in this section and a "primary construction site" or "secondary construction site" as defined in this section;
 - (D) "Onsite activities essential or incidental to offsite transportation," defined as activities conducted by a truck driver or truck driver's assistant on the site of the work that are essential or incidental to the transportation of materials or supplies to or from the site of the work, such as loading, unloading, or waiting for materials to be loaded or unloaded, but only where the driver or driver's assistant's time spent on the site of the work is not *de minimis*; and
 - (E) Any transportation and related activities, whether on or off the site of the work, by laborers and mechanics employed in the construction or development of the project under a development statute.
 - (v) Demolition and/or removal, under any of the following circumstances:

- (A) Where the demolition and/or removal activities themselves constitute construction, alteration, and/or repair of an existing building or work. Examples of such activities include the removal of asbestos, paint, components, systems, or parts from a facility that will not be demolished; as well as contracts for hazardous waste removal, land recycling, or reclamation that involve substantial earth moving, removal of contaminated soil, re-contouring surfaces, and/or habitat restoration.
 - (B) Where subsequent construction covered in whole or in part by the labor standards in this part is contemplated at the site of the demolition or removal, either as part of the same contract or as part of a future contract. In determining whether covered construction is contemplated within the meaning of this provision, relevant factors include, but are not limited to, the existence of engineering or architectural plans or surveys of the site; the allocation of, or an application for, Federal funds; contract negotiations or bid solicitations; the stated intent of the relevant government officials; and the disposition of the site after demolition.
 - (C) Where otherwise required by statute.
- (3) Except for transportation that constitutes "covered transportation" as defined in this section, construction, prosecution, completion, or repair does not include the transportation of materials or supplies to or from the site of the work.

Contract. The term "contract" means any prime contract which is subject wholly or in part to the labor standards provisions of any of the laws referenced by § 5.1 and any subcontract of any tier thereunder, let under the prime contract. With the exception of work performed under a development statute, the terms contract and subcontract do not include agreements with employers that meet the definition of a material supplier under this section.

Contracting officer. The term "contracting officer" means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of an agency, sponsor, owner, applicant, or other similar entity.

Contractor. The term "contractor" means any individual or other legal entity that enters into or is awarded a contract that is subject wholly or in part to the labor standards provisions of any of the laws referenced by § 5.1, including any prime contract or subcontract of any tier under a covered prime contract. In addition, the term contractor includes any surety that is completing performance for a defaulted contractor pursuant to a performance bond. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of the labor standards provisions of any of the laws referenced by § 5.1. A State or local government is not regarded as a contractor or subcontractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under development statutes or other statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these workers according to Davis-Bacon labor standards. The term "contractor" does not include an entity that is a material supplier, except if the entity is performing work under a development statute.

Davis-Bacon labor standards. The term "Davis-Bacon labor standards" as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes referenced in § 5.1, and the regulations in this part and in parts 1 and 3 of this subtitle.

Development statute. The term “development statute” includes the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and any other Davis-Bacon Related Act that requires payment of prevailing wages under the Davis-Bacon labor standards to all laborers and mechanics employed in the development of a project and for which the Administrator determines that the statute's language and/or legislative history reflected clear congressional intent to apply a coverage standard different from the Davis-Bacon Act itself.

Employed. Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by assistance from the United States through loan, grant, loan guarantee or insurance, or otherwise, is “employed” regardless of any contractual relationship alleged to exist between the contractor and such person.

Laborer or mechanic. The term “laborer or mechanic” includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term “laborer” or “mechanic” includes apprentices, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchpersons or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics. Forepersons who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

Material supplier. The term “material supplier” is defined as follows:

- (1) A material supplier is an entity meeting all of the following criteria:
 - (i) Its only obligations for work on the contract or project are the delivery of materials, articles, supplies, or equipment, which may include pickup of the same in addition to, but not exclusive of, delivery, and which may also include activities incidental to such delivery and pickup, such as loading, unloading, or waiting for materials to be loaded or unloaded; and
 - (ii) Its facility or facilities that manufactures the materials, articles, supplies, or equipment used for the contract or project:
 - (A) Is not located on, or does not itself constitute, the project or contract's primary construction site or secondary construction site as defined in this section; and
 - (B) Either was established before opening of bids on the contract or project, or is not dedicated exclusively, or nearly so, to the performance of the contract or project.
- (2) If an entity, in addition to being engaged in the activities specified in paragraph (1)(i) of this definition, also engages in other construction, prosecution, completion, or repair work at the site of the work, it is not a material supplier.

Prime contractor. The term “prime contractor” means any person or entity that enters into a contract with an agency. For the purposes of the labor standards provisions of any of the laws referenced by § 5.1, the term prime contractor also includes the controlling shareholders or members of any entity holding a prime contract, the joint venturers or partners in any joint venture or partnership holding a prime contract, and any contractor (e.g., a general contractor) that has been delegated the responsibility for overseeing all

or substantially all of the construction anticipated by the prime contract. For the purposes of the provisions in §§ 5.5 and 5.9, any such related entities holding different prime contracts are considered to be the same prime contractor.

Public building or public work. The term “public building or public work” includes a building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency. The construction, prosecution, completion, or repair of a portion of a building or work, or the installation (where appropriate) of equipment or components into a building or work, may still be considered a public building or work, even where the entire building or work is not owned, leased by, or to be used by a Federal agency, as long as the construction, prosecution, completion, or repair of that portion of the building or work, or the installation (where appropriate) of equipment or components into that building or work, is carried on by authority of or with funds of a Federal agency to serve the interest of the general public.

Secretary. The term “Secretary” includes the Secretary of Labor, and their authorized representative.

Site of the work. The term “site of the work” is defined as follows:

(1) “Site of the work” includes all of the following:

- (i) The primary construction site(s), defined as the physical place or places where the building or work called for in the contract will remain.
- (ii) Any secondary construction site(s), defined as any other site(s) where a significant portion of the building or work is constructed, *provided* that such construction is for specific use in that building or work and does not simply reflect the manufacture or construction of a product made available to the general public, and *provided further* that the site is either established specifically for the performance of the contract or project, or is dedicated exclusively, or nearly so, to the performance of the contract or project for a specific period of time. A “significant portion” of a building or work means one or more entire portion(s) or module(s) of the building or work, such as a completed room or structure, with minimal construction work remaining other than the installation and/or final assembly of the portions or modules at the place where the building or work will remain. A “significant portion” does not include materials or prefabricated component parts such as prefabricated housing components. A “specific period of time” means a period of weeks, months, or more, and does not include circumstances where a site at which multiple projects are in progress is shifted exclusively or nearly so to a single project for a few hours or days in order to meet a deadline.
- (iii) Any adjacent or virtually adjacent dedicated support sites, defined as:
 - (A) Job headquarters, tool yards, batch plants, borrow pits, and similar facilities of a contractor or subcontractor that are dedicated exclusively, or nearly so, to performance of the contract or project, *and* adjacent or virtually adjacent to either a primary construction site or a secondary construction site, and
 - (B) Locations adjacent or virtually adjacent to a primary construction site at which workers perform activities associated with directing vehicular or pedestrian traffic around or away from the primary construction site.

- (2) With the exception of locations that are on, or that themselves constitute, primary or secondary construction sites as defined in paragraphs (1)(i) and (ii) of this definition, site of the work does not include:
- (i) Permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally assisted contract or project; or
 - (ii) Fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a material supplier, which are established by a material supplier for the project before opening of bids and not on the primary construction site or a secondary construction site, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

Subcontractor. The term "subcontractor" means any contractor that agrees to perform or be responsible for the performance of any part of a contract that is subject wholly or in part to the labor standards provisions of any of the laws referenced in § 5.1. The term subcontractor includes subcontractors of any tier.

United States or the District of Columbia. The term "United States or the District of Columbia" means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including non-appropriated fund instrumentalities and any corporation for which all or substantially all of its stock is beneficially owned by the United States or by the foregoing departments, establishments, agencies, or instrumentalities.

Wages. The term "wages" means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

Wage determination. The term "wage determination" includes the original decision and any subsequent decisions revising, modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination must be in accordance with the provisions of § 1.6 of this subtitle.

[88 FR 57731, Aug. 23, 2023]

§§ 5.3-5.4 [Reserved]

§ 5.5 Contract provisions and related matters.

Link to an amendment published at [88 FR 57734](#), Aug. 23, 2023.

(a) **Required contract clauses.** The Agency head will cause or require the contracting officer to require the contracting officer to insert in full, or (for contracts covered by the Federal Acquisition Regulation (48 CFR chapter 1)) by reference, in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the laws referenced by § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) **Minimum wages —**

(i) **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 this section, 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 (a)(1)(v) 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 (a)(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 (a)(1)(iii) 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.

(ii) **Frequently recurring classifications.**

(A) 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 (a)(1)(iii) of this section, provided that:

- (1) 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;
 - (2) The classification is used in the area by the construction industry; and
 - (3) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.
- (B) The Administrator will establish wage rates for such classifications in accordance with paragraph (a)(1)(iii)(A)(3) 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.

(iii) **Conformance.**

- (A) 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:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is used in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.
- (C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- (D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- (E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs (a)(1)(iii)(C) and (D) 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 (a)(1)(iii)(C) or (D) 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.
 - (iv) **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.
 - (v) **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.
 - (vi) **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 –**
- (i) **Withholding requirements.** The [write in name of Federal agency or the recipient of Federal assistance] 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 paragraph (a) of 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 (or otherwise working in construction or development of the project under a development statute) 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 (a)(3)(iv) of this section, the [Agency] may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, 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.

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

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its reprourement costs;
- (C) 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;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.

(3) **Records and certified payrolls –**

(i) **Basic record requirements –**

- (A) **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.
- (B) **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.
- (C) **Additional records relating to fringe benefits.** Whenever the Secretary of Labor has found under paragraph (a)(1)(v) 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.
- (D) **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.

(ii) **Certified payroll requirements –**

- (A) **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 [write in name of appropriate Federal agency] if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of 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.
- (B) **Information required.** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (a)(3)(i)(B) 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 sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).
- (C) **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:
- (1) That the certified payroll for the payroll period contains the information required to be provided under paragraph (a)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (a)(3)(i) of this section, and such information and records are correct and complete;
 - (2) 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

- (3) 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.
- (D) **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 (a)(3)(ii)(C) of this section.
- (E) **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.
- (F) **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.
- (G) **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.
- (iii) **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.
- (iv) **Required disclosures and access –**
 - (A) **Required record disclosures and access to workers.** The contractor or subcontractor must make the records required under paragraphs (a)(3)(i) through (iii) of this section, and any other documents that the [write the name of the agency] 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 [write the name of the agency] or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.
 - (B) **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.

- (C) **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 [write in name of appropriate Federal agency] if the agency is a party to the contract, or to the Wage and Hour Division of the Department of Labor. If the Federal agency is not such a party to the contract, the contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the [write in name of agency], 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 –**

(i) **Apprentices –**

- (A) **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.
- (B) **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.
- (C) **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 (a)(4)(i)(D) 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 (a)(4)(i)(A) 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.

- (D) **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.
- (ii) **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.
- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- (6) **Subcontracts.** The contractor or subcontractor must insert in any subcontracts the clauses contained in paragraphs (a)(1) through (11) of this section, along with the applicable wage determination(s) and such other clauses or contract modifications as the [write in the name of the Federal 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.
- (7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of eligibility.**
- (i) 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).
- (ii) 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).

- (iii) 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:
- (i) 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;
 - (ii) 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;
 - (iii) 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
 - (iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.
- (b) **Contract Work Hours and Safety Standards Act (CWHSSA).** The Agency Head must cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1) through (5) of this section in full, or (for contracts covered by the Federal Acquisition Regulation) by reference, in any 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 must be inserted in addition to the clauses required by paragraph (a) of this section or 29 CFR 4.6. As used in this paragraph (b), 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.
 - (2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(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 (b)(1) of this section, in the sum of \$32 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 (b)(1).
 - (3) **Withholding for unpaid wages and liquidated damages –**
 - (i) **Withholding process.** The [write in the name of the Federal agency or the recipient of Federal assistance] 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 paragraph (b) 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.

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

- (A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- (B) A contracting agency for its reprourement costs;
- (C) 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;
- (D) A contractor's assignee(s);
- (E) A contractor's successor(s); or
- (F) 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 (b)(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 (b)(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:

- (i) 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;
- (ii) 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;

- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
 - (iv) Informing any other person about their rights under CWHSSA or this part.
- (c) **CWHSSA required records clause.** In addition to the clauses contained in paragraph (b) of this section, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other laws referenced by § 5.1, the Agency Head must cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor must maintain regular payrolls and other basic records during the course of the work and must preserve them for a period of 3 years after all the work on the prime contract is completed for all laborers and mechanics, including guards and watchpersons, working on the contract. Such records must contain the name; last known address, telephone number, and email address; and social security number of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid; daily and weekly number of hours actually worked; deductions made; and actual wages paid. Further, the Agency Head must cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph must be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview workers during working hours on the job.
- (d) **Incorporation of contract clauses and wage determinations by reference.** Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered contracts, and contractors and subcontractors are required to insert them in any lower-tier subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.
- (e) **Incorporation by operation of law.** The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime contract required by the applicable statutes referenced by § 5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime contractor must be compensated for any resulting increase in wages in accordance with applicable law.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control No.
(a)(1)(ii)(B)	1235-0023
(a)(1)(ii)(C)	1235-0023
(a)(1)(iv)	1235-0023
(a)(3)(i)	1235-0023
(a)(3)(ii)(A)	1235-0023

Paragraph	OMB Control No.
(c)	1235-0008
	1235-0023

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008; 81 FR 43450, July 1, 2016; 82 FR 2225, 2226, Jan. 9, 2017; 83 FR 12, Jan 2, 2018; 84 FR 218, Jan. 23, 2019; 87 FR 2334, Jan. 14, 2022; 88 FR 2215, Jan. 13, 2023; 88 FR 57734, Aug. 23, 2023; 89 FR 1815, Jan. 11, 2024]

§ 5.6 Enforcement.

(a) Agency responsibilities.

(1)

- (i) The Federal agency has the initial responsibility to ascertain whether the clauses required by § 5.5 and the appropriate wage determination(s) have been incorporated into the contracts subject to the labor standards provisions of the laws referenced by § 5.1. Additionally, a Federal agency that provides Federal financial assistance that is subject to the labor standards provisions of the Act must promulgate the necessary regulations or procedures to require the recipient or sub-recipient of the Federal assistance to insert in its contracts the provisions of § 5.5. No payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency unless it ensures that the clauses required by § 5.5 and the appropriate wage determination(s) are incorporated into such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds will be approved by the Federal agency after the beginning of construction unless there is on file with the Federal agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of § 5.5 or unless there is on file with the Federal agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.
- (ii) If a contract subject to the labor standards provisions of the applicable statutes referenced by § 5.1 is entered into without the incorporation of the clauses required by § 5.5, the agency must, upon the request of the Administrator or upon its own initiative, either terminate and resolicit the contract with the required contract clauses, or incorporate the required clauses into the contract (or ensure they are so incorporated) through supplemental agreement, change order, or any and all authority that may be needed. Where an agency has not entered directly into such a contract but instead has provided Federal financial assistance, the agency must ensure that the recipient or sub-recipient of the Federal assistance similarly incorporates the clauses required into its contracts. The method of incorporation of the correct wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable law. Additionally, the following requirements apply:
 - (A) Unless the Administrator directs otherwise, the incorporation of the clauses required by § 5.5 must be retroactive to the date of contract award or start of construction if there is no award.

- (B) If this incorporation occurs as the result of a request from the Administrator, the incorporation must take place within 30 days of the date of that request, unless the agency has obtained an extension from the Administrator.
 - (C) The contractor must be compensated for any increases in wages resulting from incorporation of a missing contract clause.
 - (D) If the recipient refuses to incorporate the clauses as required, the agency must make no further payment, advance, grant, loan, or guarantee of funds in connection with the contract until the recipient incorporates the required clauses into its contract, and must promptly refer the dispute to the Administrator for further proceedings under § 5.13.
 - (E) Before terminating a contract pursuant to this section, the agency must withhold or cross-withhold sufficient funds to remedy any back wage liability resulting from the failure to incorporate the correct wage determination or otherwise identify and obligate sufficient funds through a termination settlement agreement, bond, or other satisfactory mechanism.
 - (F) Notwithstanding the requirement to incorporate the contract clauses and correct wage determination within 30 days, the contract clauses and correct wage determination will be effective by operation of law, retroactive to the beginning of construction, in accordance with § 5.5(e).
- (2)
- (i) Certified payrolls submitted pursuant to § 5.5(a)(3)(ii) must be preserved by the Federal agency for a period of 3 years after all the work on the prime contract is completed, and must be produced at the request of the Department of Labor at any time during the 3-year period, regardless of whether the Department of Labor has initiated an investigation or other compliance action.
 - (ii) In situations where the Federal agency does not itself maintain certified payrolls required to be submitted pursuant to § 5.5(a)(3)(ii), upon the request of the Department of Labor the Federal agency must ensure that such certified payrolls are provided to the Department of Labor. Such certified payrolls may be provided by the applicant, sponsor, owner, or other entity, as the case may be, directly to the Department of Labor, or to the Federal agency which, in turn, must provide those records to the Department of Labor.
- (3) The Federal agency will cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by § 5.5 and the applicable statutes referenced in § 5.1. Investigations will be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations will include interviews with workers, which must be taken in confidence, and examinations of certified payrolls, regular payrolls, and other basic records required to be maintained under § 5.5(a)(3). In making such examinations, particular care must be taken to determine the correctness of classification(s) of work actually performed, and to determine whether there is a disproportionate amount of work by laborers and of apprentices registered in approved programs. Such investigations must also include evidence of fringe benefit plans and payments thereunder. Federal agencies must give priority to complaints of alleged violations.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages, liquidated damages, and monetary relief for violations of § 5.5(a)(11) or (b)(5), and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(b) **Department of Labor investigations and other compliance actions.**

(1) The Administrator will investigate and conduct other compliance actions as deemed necessary in order to obtain compliance with the labor standards provisions of the applicable statutes referenced by § 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes referenced by § 5.1.

(2) Federal agencies, contractors, subcontractors, sponsors, applicants, owners, or other entities, as the case may be, must cooperate with any authorized representative of the Department of Labor in the inspection of records, in interviews with workers, and in all other aspects of the investigations or other compliance actions.

(3) The findings of such an investigation or other compliance action, including amounts found due, may not be altered or reduced without the approval of the Department of Labor.

(4) Where the underpayments disclosed by such an investigation or other compliance action total \$1,000 or more, where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, or where liquidated damages may be assessed under CWHSSA, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation or other compliance action and any action taken by the contractor or subcontractor to correct the violations, including any payment of back wages or any other relief provided workers or remedial actions taken for violations of § 5.5(a)(11) or (b)(5). In other circumstances, the Department of Labor will furnish the Federal agency a notification summarizing the findings of the investigation or other compliance action.

(c) **Confidentiality requirements.** It is the policy of the Department of Labor to protect from disclosure the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of a worker or other informant who makes a written or oral statement as a complaint or in the course of an investigation or other compliance action, as well as portions of the statement which would tend to reveal the identity of the informant, will not be disclosed in any manner to anyone other than Federal officials without the prior consent of the informant. Disclosure of such statements is also governed by the provisions of the "Freedom of Information Act" (5 U.S.C. 552, see part 70 of this subtitle) and the "Privacy Act of 1974" (5 U.S.C. 552a, see part 71 of this subtitle).

[88 FR 57739, Aug. 23, 2023]

§ 5.7 Reports to the Secretary of Labor.

(a) **Enforcement reports.**

(1) Where underpayments by a contractor or subcontractor total less than \$1,000, where there is no reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, and where restitution has been effected and future compliance assured, the Federal

agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation or other compliance action was made at the request of the Department of Labor. In the latter case, the Federal agency will submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as "letters of notice" or remedial action taken for violations of § 5.5(a)(11) or (b)(5)), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under § 5.8.

- (2) Where underpayments by a contractor or subcontractor total \$1,000 or more, or where there is reason to believe that the contractor or subcontractor has disregarded its obligations to workers or subcontractors, the Federal agency will furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.
- (b) **Semi-annual enforcement reports.** To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.
- (c) **Additional information.** Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.
- (d) **Contract termination.** Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in § 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

[48 FR 19540, Apr. 29, 1983, as amended at 88 FR 57734, Aug. 23, 2023]

§ 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

- (a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages 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 any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of \$32 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor or subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

- (b) **Findings and recommendations of the Agency Head.** The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of \$500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.
- (c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.
- (d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is \$500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51 FR 13496, Apr. 21, 1986; 81 FR 43450, July 1, 2016; 83 FR 12, Jan. 2, 2018; 84 FR 218, Jan. 23, 2019; 87 FR 2334, Jan. 14, 2022; 88 FR 2215, Jan. 13, 2023; 89 FR 1815, Jan. 11, 2024]

§ 5.9 Suspension of funds.

- (a) **Suspension and withholding.** In the event of failure or refusal of the contractor or any subcontractor to comply with the applicable statutes referenced by § 5.1 and the labor standards clauses contained in § 5.5, whether incorporated into the contract physically, by reference, or by operation of law, the Federal agency (and any other agency), may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, take such action as may be necessary to cause the suspension of the payment, advance, or guarantee of funds until such time as the violations are discontinued and/or until sufficient funds are withheld as may be considered necessary to compensate workers for the full amount of wages and monetary relief to which they are entitled, and to cover any liquidated damages and pre-judgment or post-judgment interest which may be due.

- (b) **Cross-withholding.** To satisfy a contractor's liability for back wages on a contract, in addition to the suspension and withholding of funds from the contract(s) under which the violation(s) occurred, the necessary funds also may be withheld under any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards and/or 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.
- (c) **Cross-withholding from different legal entities.** Cross-withholding of funds may be requested from contracts held by other entities that may be considered to be the same prime contractor as that term is defined in § 5.2. Such cross-withholding is appropriate where the separate legal entities have independently consented to it by entering into contracts containing the withholding provisions at § 5.5(a)(2) and (b)(3). Cross-withholding from a contract held by a different legal entity is not appropriate unless the withholding provisions were incorporated in full or by reference in that different legal entity's contract. Absent exceptional circumstances, cross-withholding is not permitted from a contract held by a different legal entity where the Davis-Bacon labor standards were incorporated only by operation of law into that contract.

[88 FR 57740, Aug. 23, 2023]

§ 5.10 Restitution, criminal action.

- (a) In cases other than those forwarded to the Attorney General of the United States under paragraph (b) of this section where violations of the labor standards clauses contained in § 5.5 and the applicable statutes referenced by § 5.1 result in underpayment of wages to workers or monetary damages caused by violations of § 5.5(a)(11) or (b)(5), the Federal agency or an authorized representative of the Department of Labor will request that restitution be made to such workers or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of 40 U.S.C. 3141(2)(B), including interest from the date of the underpayment or loss. Interest on any back wages or monetary relief provided for in this part will be calculated using the percentage established for the underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily.
- (b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter will be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator will be informed simultaneously of the action taken.

[88 FR 57741, Aug. 23, 2023]

§ 5.11 Disputes concerning payment of wages.

- (a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, proper classification, or monetary relief for violations of § 5.5(a)(11) or (b)(5). The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to § 5.5(a)(9), or upon request of the contractor or subcontractor.
- (b)

- (1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor, if any, by registered or certified mail to the last known address or by any other means normally assuring delivery, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that either the contractor, the subcontractor, or both, should also be subject to debarment under the Davis-Bacon Act or any of the other applicable statutes referenced by § 5.1, the notification will so indicate.
- (2) A contractor or subcontractor desiring a hearing concerning the Administrator's investigation findings must request such a hearing by letter or by any other means normally assuring delivery, sent within 30 days of the date of the Administrator's notification. The request must set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses.
- (3) Upon receipt of a timely request for a hearing, the Administrator will refer the case to the Chief Administrative Law Judge by Order of Reference, with an attached copy of the notification from the Administrator and the response of the contractor or subcontractor, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearings will be conducted in accordance with the procedures set forth in part 6 of this subtitle.

(c)

- (1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under § 5.12, the Administrator will notify the contractor and subcontractor, if any, by registered or certified mail to the last known address or by any other means normally assuring delivery, of the investigation findings, and will issue a ruling on any issues of law known to be in dispute.
- (2)
 - (i) If the contractor or subcontractor disagrees with the factual findings of the Administrator or believes that there are relevant facts in dispute, the contractor or subcontractor must advise the Administrator by letter or by any other means normally assuring delivery, sent within 30 days of the date of the Administrator's notification. In the response, the contractor or subcontractor must explain in detail the facts alleged to be in dispute and attach any supporting documentation.
 - (ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator will examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator will refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator will so rule and advise the contractor and subcontractor, if any, accordingly.
- (3) If the contractor or subcontractor desires review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor or subcontractor must file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof to the Administrator. The petition for review must be filed in accordance with part 7 of this subtitle.

- (d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings or ruling will be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator will advise the Comptroller General of the Administrator's recommendation in accordance with § 5.12(a)(2). If a timely response or petition for review is filed, the findings or ruling of the Administrator will be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

[88 FR 57741, Aug. 23, 2023]

§ 5.12 Debarment proceedings.

(a) *Debarment standard and ineligible list.*

- (1) Whenever any contractor or subcontractor is found by the Secretary of Labor to have disregarded their obligations to workers or subcontractors under the Davis-Bacon Act, any of the other applicable statutes referenced by § 5.1, this part, or part 3 of this subtitle, such contractor or subcontractor and their responsible officers, if any, and any firm, corporation, partnership, or association in which such contractor, subcontractor, or responsible officer has an interest will be ineligible for a period of 3 years to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of any of the statutes referenced by § 5.1.
- (2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator will transmit to the Comptroller General the name(s) of the contractors or subcontractors and their responsible officers, if any, and any firms, corporations, partnerships, or associations in which the contractors, subcontractors, or responsible officers are known to have an interest, who have been found to have disregarded their obligations to workers or subcontractors, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. In cases arising under contracts covered by any of the applicable statutes referenced by § 5.1 other than the Davis-Bacon Act, the Administrator determines the name(s) of the contractors or subcontractors and their responsible officers, if any, and any firms, corporations, partnerships, or associations in which the contractors, subcontractors, or responsible officers are known to have an interest, to be debarred. The names of such ineligible persons or firms will be published on SAM or its successor website, and an ineligible person or firm will be ineligible for a period of 3 years from the date of publication of their name on the ineligible list, to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of any of the statutes referenced by § 5.1.

(b) *Procedure.*

- (1) In addition to cases under which debarment action is initiated pursuant to § 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed violations which constitute a disregard of its obligations to workers or subcontractors under the Davis-Bacon Act, the labor standards provisions of any of the other applicable statutes referenced by § 5.1, this part, or part 3 of this subtitle, the Administrator will notify by registered or certified mail to the last known address or by any other means normally assuring delivery, the contractor or subcontractor and responsible officers, if any, and any firms, corporations, partnerships, or associations in which the contractors, subcontractors, or responsible officers are known to have an interest of the finding.

- (i) The Administrator will afford such contractor, subcontractor, responsible officer, and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a) of this section. The Administrator will furnish to those notified a summary of the investigative findings.
- (ii) If the contractor, subcontractor, responsible officer, or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request must be made by letter or by any other means normally assuring delivery, sent within 30 days of the date of the notification from the Administrator, and must set forth any findings which are in dispute and the basis for such disputed findings, including any affirmative defenses to be raised.
- (iii) Upon timely receipt of such request for a hearing, the Administrator will refer the case to the Chief Administrative Law Judge by Order of Reference, with an attached copy of the notification from the Administrator and the responses of the contractor, subcontractor, responsible officers, or any other parties notified, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute.
- (iv) In considering debarment under any of the statutes referenced by § 5.1 other than the Davis-Bacon Act, the Administrative Law Judge will issue an order concerning whether the contractor, subcontractor, responsible officer, or any other party notified is to be debarred in accordance with paragraph (a) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge will issue a recommendation as to whether the contractor, subcontractor, responsible officers, or any other party notified should be debarred under 40 U.S.C. 3144(b).

(2) Hearings under this section will be conducted in accordance with part 6 of this subtitle. If no hearing is requested within 30 days of the date of the notification from the Administrator, the Administrator's findings will be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) *Interests of debarred parties.*

(1) A finding as to whether persons or firms whose names appear on the ineligible list have an interest under 40 U.S.C. 3144(b) or paragraph (a) of this section in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)

- (i) The Administrator, on their own motion or after receipt of a request for a determination pursuant to paragraph (c)(3) of this section, may make a finding on the issue of interest.
- (ii) If the Administrator determines that there may be an interest but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (c)(4) of this section.
- (iii) If the Administrator finds that no interest exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)

- (A) If the Administrator finds that an interest exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address or by any other means normally assuring delivery), which will include the reasons therefore, and such person or firm will be afforded an opportunity to request that a hearing be held to decide the issue.
 - (B) Such person or firm will have 20 days from the date of the Administrator's ruling to request a hearing. A person or firm desiring a hearing must request it by letter or by any other means normally assuring delivery, sent within 20 days of the date of the Administrator's notification. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, must be submitted with the request for a hearing.
 - (C) If no hearing is requested within the time mentioned in paragraph (c)(2)(iv)(B) of this section, the Administrator's finding will be final and the Administrator will notify the Comptroller General in cases arising under the DBA. If a hearing is requested, the ruling of the Administrator will be inoperative unless and until the Administrative Law Judge or the Administrative Review Board issues an order that there is an interest.
- (3)
- (i) A request for a determination of interest may be made by any interested party, including contractors or prospective contractors and associations of contractors, representatives of workers, and interested agencies. Such a request must be submitted in writing to the Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.
 - (ii) The request must include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the ineligible list has an interest in any firm, corporation, partnership, or association that is seeking or has been awarded a contract or subcontract of the United States or the District of Columbia, or a contract or subcontract that is subject to the labor standards provisions of any of the statutes referenced by § 5.1. No particular form is prescribed for the submission of a request under this section.
- (4) The Administrator, on their own motion under paragraph (c)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who will conduct such hearings as may be necessary to render a decision solely on the issue of interest. Such proceedings must be conducted in accordance with the procedures set forth in part 6 of this subtitle.
- (5) If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest. Such proceeding must be conducted in accordance with the procedures set forth in part 7 of this subtitle.

[88 FR 57741, Aug. 23, 2023]

§ 5.13 Rulings and interpretations.

- (a) All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3 of this subtitle, and of the labor standards provisions of any of the laws referenced in § 5.1 must be referred to the Administrator for appropriate ruling or interpretation. These rulings and interpretations are authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be submitted via email to dgceinquiries@dol.gov; by mail to Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210; or through other means directed by the Administrator.
- (b) If any such ruling or interpretation is made by an authorized representative of the Administrator of the Wage and Hour Division, any interested party may seek reconsideration of the ruling or interpretation by the Administrator of the Wage and Hour Division. The procedures and time limits set out in § 1.8 of this subtitle apply to any such request for reconsideration.

[88 FR 57743, Aug. 23, 2023]

§ 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in § 5.1 unless the statute specifically provides such authority.

§ 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

- (a) **General.** Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.
- (b) **Exemptions.** Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:
 - (1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein Atoll; and Johnston Island.

- (2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.
- (3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) **Tolerances.**

- (1) The "basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.
- (2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and § 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the "regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the "basic rate" under the Contract Work Hours and Safety Standards Act.
- (3) See § 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling \$500 or less under specified circumstances.
- (4)
 - (i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.
 - (ii) The apprentice comes within the definition contained in § 5.2.
 - (iii) The time in question does not involve productive work or performance of the apprentice's regular duties.

(d) **Variations.**

- (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully the unpaid wages and any back pay or other monetary relief due laborers and mechanics, with interest, and the liquidated damages due the United States, the available funds will be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, will be used for the payment of liquidated damages.
- (2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the

workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1¹/₂ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

- (3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:
 - (i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.
 - (A) The employee receives gross wages of not less than \$300 per week regardless of the total number of hours worked in any workweek, and
 - (B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;
 - (ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1235-0023 and 1235-0018. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1235-0018)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996; 82 FR 2226, Jan. 9, 2017; 88 FR 57743, Aug. 23, 2023]

§ 5.16 [Reserved]

§ 5.17 [Reserved]

§ 5.18 Remedies for retaliation.

- (a) **Administrator request to remedy violation.** When the Administrator finds that any person has discriminated in any way against any worker or job applicant in violation of § 5.5(a)(11) or (b)(5), or caused any person to discriminate in any way against any worker or job applicant in violation of § 5.5(a)(11) or (b)(5), the Administrator will notify the person, any contractors for whom the person worked or on whose behalf the person acted, and any upper tier contractors, as well as the relevant contracting agency(ies) of the discrimination and request that the person and any contractors for whom the person worked or on whose behalf the person acted remedy the violation.
- (b) **Administrator directive to remedy violation and provide make-whole relief.** If the person and any contractors for whom the person worked or on whose behalf the person acted do not remedy the violation, the Administrator in the notification of violation findings issued under § 5.11 or § 5.12 will direct the person and any contractors for whom the person worked or on whose behalf the person acted to provide appropriate make-whole relief to affected worker(s) and job applicant(s) or take appropriate remedial action, or both, to correct the violation, and will specify the particular relief and remedial actions to be taken.
- (c) **Examples of available make-whole relief and remedial actions.** Such relief and remedial actions may include, but are not limited to, employment, reinstatement, front pay in lieu of reinstatement, and promotion, together with back pay and interest; compensatory damages; restoration of the terms, conditions, and privileges of the worker's employment or former employment; the expungement of warnings, reprimands, or derogatory references; the provision of a neutral employment reference; and the posting of a notice to workers that the contractor or subcontractor agrees to comply with the Davis-Bacon Act and Related Acts anti-retaliation requirements.

[88 FR 57743, Aug. 23, 2023]

Subpart B—Interpretation of the Fringe Benefits Provisions of the Davis-Bacon Act

Source: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

§ 5.20 Scope and significance of this subpart.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally assisted construction include the basic hourly rate of pay and the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments and make available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also to provide guidance to contractors and their associations; laborers and mechanics and their organizations; and local, State, and Federal agencies. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in § 5.13.

[88 FR 57743, Aug. 23, 2023]

§ 5.21 [Reserved]

§ 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the statutes referenced in § 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See the definitions of the terms “prevailing wage” and “area” in § 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms “wages”, “scale of wages”, “wage rates”, “minimum wages”, and “prevailing wages”, as used in the Davis-Bacon Act.

[88 FR 57744, Aug. 23, 2023]

§ 5.23 The statutory provisions.

Pursuant to the Davis-Bacon Act, as amended and codified at 40 U.S.C. 3141(2), the term “prevailing wages” and similar terms include the basic hourly rate of pay and, for the listed fringe benefits and other bona fide fringe benefits not required by other law, the contributions irrevocably made by a contractor or subcontractor to a trustee or third party pursuant to a bona fide fringe benefit fund, plan, or program, and the costs to the contractor or subcontractor that may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the affected laborers and mechanics. Section 5.29 discusses specific fringe benefits that may be considered to be bona fide.

[88 FR 57744, Aug. 23, 2023]

§ 5.24 The basic hourly rate of pay.

“The basic hourly rate of pay” is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

§ 5.25 Rate of contribution or cost for fringe benefits.

- (a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.
- (b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See § 5.5(a)(1)(i) and (iii).

- (c) Except as provided in this section, contractors must “annualize” all contributions to fringe benefit plans (or the reasonably anticipated costs of an unfunded benefit plan) to determine the hourly equivalent for which they may take credit against their fringe benefit obligation. The “annualization” principle reflects that DBRA credit for contributions made to bona fide fringe benefit plans (or the reasonably anticipated costs of an unfunded benefit plan) is allowed based on the effective rate of contributions or costs incurred for total hours worked during the year (or a shorter time period) by a laborer or mechanic.
- (1) **Method of computation.** To annualize the cost of providing a fringe benefit, a contractor must divide the total cost of the fringe benefit contribution (or the reasonably anticipated costs of an unfunded benefit plan) by the total number of hours worked on both private (non-DBRA) work and work covered by the Davis-Bacon Act and/or Davis-Bacon Related Acts (DBRA-covered work) during the time period to which the cost is attributable to determine the rate of contribution per hour. If the amount of contribution varies per worker, credit must be determined separately for the amount contributed on behalf of each worker.
- (2) **Exception requests.** Contractors, plans, and other interested parties may request an exception from the annualization requirement by submitting a request to the WHD Administrator. A request for an exception may be granted only if each of the requirements of paragraph (c)(3) of this section is satisfied. Contributions to defined contribution pension plans (DCPPs) are excepted from the annualization requirement, and exception requests therefore are not required in connection with DCPPs, provided that each of the requirements of paragraph (c)(3) is satisfied and the DCPP provides for immediate participation and essentially immediate vesting (*i.e.*, the benefit vests within the first 500 hours worked). Requests must be submitted in writing to the Division of Government Contracts Enforcement by email to DBAannualization@dol.gov or by mail to Director, Division of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Ave. NW, Room S-3502, Washington, DC 20210.
- (3) **Exception requirements.** Contributions to a bona fide fringe benefit plan (or the reasonably anticipated costs of an unfunded benefit plan) are excepted from the annualization requirement if all of the following criteria are satisfied:
- (i) The benefit provided is not continuous in nature. A benefit is not continuous in nature when it is not available to a participant without penalty throughout the year or other time period to which the cost of the benefit is attributable; and
- (ii) The benefit does not compensate both private work and DBRA-covered work. A benefit does not compensate both private and DBRA-covered work if any benefits attributable to periods of private work are wholly paid for by compensation for private work.

[29 FR 13465, Sept. 30, 1964, as amended at 88 FR 57744, Aug. 23, 2023]

§ 5.26 “* * * contribution irrevocably made * * * to a trustee or to a third person”.

- (a) **Requirements.** The following requirements apply to any fringe benefit contributions made to a trustee or to a third person pursuant to a fund, plan, or program:
- (1) Such contributions must be made irrevocably;
- (2) The trustee or third person may not be affiliated with the contractor or subcontractor;
- (3) A trustee must adhere to any fiduciary responsibilities applicable under law; and

(4) The trust or fund must not permit the contractor or subcontractor to recapture any of the contributions paid in or any way divert the funds to its own use or benefit.

(b) **Excess payments.** Notwithstanding the above, a contractor or subcontractor may recover sums which it had paid to a trustee or third person in excess of the contributions actually called for by the plan, such as excess payments made in error or in order to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions is not yet known. For example, a benefit plan may provide for definite insurance benefits for employees in the event of contingencies such as death, sickness, or accident, with the cost of such definite benefits borne by the contractor or subcontractor. In such a case, if the insurance company returns the amount that the contractor or subcontractor paid in excess of the amount required to provide the benefits, this will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

[88 FR 57744, Aug. 23, 2023]

§ 5.27 “* * * fund, plan, or program”.

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase “fund, plan, or program” is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

§ 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the Act, pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the Act (see 40 U.S.C. 3141(2)(B)(ii)). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting these requirements, among others, and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4; see also S. Rep. No. 963, p. 6.)

(b) Such a benefit plan or program, commonly referred to as an unfunded plan, may not constitute a fringe benefit within the meaning of the Act unless:

(1) It could be reasonably anticipated to provide the benefits described in the Act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program;

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected; and

(5) The contractor or subcontractor requests and receives approval of the plan or program from the Secretary, as described in paragraph (c) of this section.

- (c) To receive approval of an unfunded plan or program, a contractor or subcontractor must demonstrate in its request to the Secretary that the unfunded plan or program, and the benefits provided under such plan or program, are “bona fide,” meet the requirements set forth in paragraphs (b)(1) through (4) of this section, and are otherwise consistent with the Act. The request must include sufficient documentation to enable the Secretary to evaluate these criteria. Contractors and subcontractors may request approval of an unfunded plan or program by submitting a written request in one of the following manners:
- (1) By mail to the United States Department of Labor, Wage and Hour Division, Director, Division of Government Contracts Enforcement, 200 Constitution Ave. NW, Room S-3502, Washington, DC 20210;
 - (2) By email to unfunded@dol.gov (or its successor email address); or
 - (3) By any other means directed by the Administrator.
- (d) Unfunded plans or programs may not be used as a means of avoiding the Act's requirements. The words “reasonably anticipated” require that any unfunded plan or program be able to withstand a test of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the Act, an unfunded plan or program must be “bona fide” and not a mere simulation or sham for avoiding compliance with the Act. To prevent these provisions from being used to avoid compliance with the Act, the Secretary may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet future obligations under the plan. Such an account must be preserved for the purpose intended. (S. Rep. No. 963, p. 6.)

[88 FR 57744, Aug. 23, 2023]

§ 5.29 Specific fringe benefits.

- (a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.
- (b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).
- (c) The term “other bona fide fringe benefits” is the so-called “open end” provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).
- (d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be “bona fide” (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is “bona fide” in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or

program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under § 5.5(a)(1)(iv).

- (e) Where the plan is not of the conventional type described in paragraph (d) of this section, the Secretary must examine the facts and circumstances to determine whether fringe benefits under the plan are “bona fide” in accordance with requirements of the Act. This is particularly true with respect to unfunded plans discussed in § 5.28. Contractors or subcontractors seeking credit under the Act for costs incurred for such plans must request specific approval from the Secretary under § 5.5(a)(1)(iv).
- (f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.
- (g) For a contractor or subcontractor to take credit for the costs of an apprenticeship program, the following requirements must be met:
 - (1) The program, in addition to meeting all other relevant requirements for fringe benefits in this subpart, must be registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship (“OA”), or with a State Apprenticeship Agency recognized by the OA.
 - (2) The contractor or subcontractor may only take credit for amounts reasonably related to the costs of the apprenticeship benefits actually provided to the contractor's employees, such as instruction, books, and tools or materials. It may not take credit for voluntary contributions beyond such costs. Amounts the employer is required to contribute by a collective bargaining agreement or by a bona fide apprenticeship plan will be presumed to be reasonably related to such costs in the absence of evidence to the contrary.
 - (3) Costs incurred for the apprenticeship for one classification of laborer or mechanic may not be used to offset costs incurred for another classification.
 - (4) In applying the annualization principle to compute the allowable fringe benefit credit pursuant to § 5.25, the total number of working hours of employees to which the cost of an apprenticeship program is attributable is limited to the total number of hours worked by laborers and mechanics in the apprentice's classification. For example, if a contractor enrolls an employee in an apprenticeship program for carpenters, the permissible hourly Davis-Bacon credit is determined by dividing the cost of the program by the total number of hours worked by the contractor's carpenters and carpenters' apprentices on covered and non-covered projects during the time period to which the cost is attributable, and such credit may only be applied against the contractor's prevailing wage obligations for all carpenters and carpenters' apprentices for each hour worked on the covered project.

[29 FR 13465, Sept. 30, 1964, as amended at 88 FR 57745, Aug. 23, 2023]

§ 5.30 Types of wage determinations.

- (a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. The examples contained in paragraph (c) of this section demonstrate how fringe benefits may be listed on wage determinations in such cases.
- (b) Wage determinations do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs, the wage determination will contain only the basic hourly rates of pay which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.
- (c) The following illustrates examples of the situations discussed in paragraph (a) and (b) of this section:

Figure 1 to Paragraph (c)

CLASSIFICATION	RATE	FRINGES
Bricklayer	\$21.96	\$0.00
Electrician	\$47.65	3%+\$14.88
Elevator mechanic	\$48.60	\$35.825+a+b a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving. b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.
Ironworker, structural	\$32.00	\$12.01
Laborer: common or general	\$21.93	\$6.27
Operator: bulldozer	\$18.11	\$0.00
Plumber (excludes HVAC duct, pipe and unit installation)	\$38.38	\$16.67

Note 1 to paragraph (c): This format is not necessarily in the exact form in which determinations will issue; it is for illustration only.

[88 FR 57745, Aug. 23, 2023]

§ 5.31 Meeting wage determination obligations.

- (a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge their minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for “bona fide” fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.
- (b) A contractor or subcontractor may discharge their obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to their laborers or mechanics in the following ways:
 - (1) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for “bona fide” fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for “Laborer: common or general” in § 5.30, figure 1 to paragraph (c), will be met by the payment of a straight time hourly rate of not less than \$21.93 and by contributions of not less than a total of \$6.27 an hour for “bona fide” fringe benefits; or
 - (2) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, they would meet their obligations for “Laborer: common or general” in § 5.30, figure 1 to paragraph (c), by paying directly to the laborers a straight time hourly rate of not less than \$28.60 (\$21.93 basic hourly rate plus \$6.27 for fringe benefits); or
 - (3) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge their minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) and (2) of this section. Thus, for example, their obligations for “Laborer: common or general” may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than \$28.60 (\$21.93 basic hourly rate plus \$6.27 for fringe benefits).

[88 FR 57746, Aug. 23, 2023]

§ 5.32 Overtime payments.

- (a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to

fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase "contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)

(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics \$3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of \$3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of \$3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying \$3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of \$3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be \$3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the \$3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying \$3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to \$2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as \$1 an hour. In this example the regular or basic hourly rate would continue to be \$3 an hour. See S. Rep. No. 963, p. 7.

§ 5.33 Administrative expenses of a contractor or subcontractor.

(a) **Creditable costs.** The costs incurred by a contractor's insurance carrier, third-party trust fund, or other third-party administrator that are directly related to the administration and delivery of bona fide fringe benefits to the contractor's laborers and mechanics can be credited towards the contractor's obligations under a Davis-Bacon wage determination. Thus, for example, a contractor may take credit for the premiums it pays to an insurance carrier or the contributions it makes to a third-party trust fund that both administers and delivers bona fide fringe benefits under a plan, where the insurance carrier or third-party trust fund uses those monies to pay for bona fide fringe benefits and for the administration and delivery of such benefits, including evaluating benefit claims, deciding whether they should be paid, approving referrals to specialists, and other reasonable costs of administering the plan. Similarly, a contractor may also take credit for monies paid to a third-party administrator to perform tasks that are directly related to the administration and delivery of bona fide fringe benefits, including under an unfunded plan.

- (b) **Noncreditable costs.** A contractor's own administrative expenses incurred in connection with the provision of fringe benefits are considered business expenses of the firm and are therefore not creditable towards the contractor's prevailing wage obligations, including when the contractor pays a third party to perform such tasks in whole or in part. For example, a contractor may not take credit for the costs of office employees who perform tasks such as filling out medical insurance claim forms for submission to an insurance carrier, paying and tracking invoices from insurance carriers or plan administrators, updating the contractor's personnel records when workers are hired or separate from employment, sending lists of new hires and separations to insurance carriers or plan administrators, or sending out tax documents to the contractor's workers, nor can the contractor take credit for the cost of paying a third-party entity to perform these tasks. Additionally, recordkeeping costs associated with ensuring the contractor's compliance with the Davis-Bacon fringe benefit requirements, such as the cost of tracking the amount of a contractor's fringe benefit contributions or making sure contributions cover the fringe benefit amount claimed, are considered a contractor's own administrative expenses and are not considered directly related to the administration and delivery of bona fide fringe benefits. Thus, such costs are not creditable whether the contractor performs those tasks itself or whether it pays a third party a fee to perform those tasks.
- (c) **Questions regarding administrative expenses.** Any questions regarding whether a particular cost or expense is creditable towards a contractor's prevailing wage obligations should be referred to the Administrator for resolution prior to any such credit being claimed.

[88 FR 57747, Aug. 23, 2023]

Subpart C—Severability

Source: 88 FR 57747, Aug. 23, 2023, unless otherwise noted.

§ 5.40 Severability.

The provisions of this part are separate and severable and operate independently from one another. If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision is to be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of utter invalidity or unenforceability, in which event the provision is severable from this part and will not affect the remaining provisions.

NON-COLLUSION AFFIDAVIT

By submission of this bid or proposal, the bidder certifies that:

a) This bid or proposal has been independently arrived at without collusion with any other bidder or with any competitor or potential competitor;

b) Bidder has not directly or indirectly knowingly disclosed this bid or proposal and will not, prior to the opening of bids or proposals for this project, knowingly disclose this bid or proposal to any other bidder, competitor, or potential competitor;

c) Bidder has not attempted and will not attempt to induce any other person or entity to submit or not to submit a bid or proposal **or to** fix the overhead, profit, or cost element of said bid price or that of any other bidder, or to secure any unfair advantage against the Owner;

d) The person signing this bid or proposal on behalf of the bidder certifies that he or she is fully informed regarding the accuracy of the statements contained in this affidavit, and under the penalty of perjury affirms the truth thereof, and bidder acknowledges that the penalty for perjury is applicable to the bidder as well as to the person signing on behalf of the bidder;

e) If bidder is a legal entity other than a natural person, bidder has attached a certified copy of the resolution authorizing the execution of this certificate by the person named below who signed this bid or proposal on behalf of bidder.

f) The undersigned, hereby affirms that he or she is the _____(title) of _____the party making the foregoing proposal or bid for Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge 2-Step Construction Manager At Risk Services (READVERTISE) (Project description), that such proposal or bid is genuine and not collusive, and that all statements herein are true.

Signature:

Name:

Title*:

*Bidder (if the bidder is an Individual); Partner (if the bidder is a Partnership); Officer (if the bidder is a Corporation); Member of Manager (if bidder is a Limited Liability Company)

STATE OF ARIZONA)

) ss.

County of Maricopa)

Subscribed and sworn to before me this ____ day of _____, 20__ by

_____, the _____ of

_____(Bidder), on behalf of Bidder.

Notary Public

My commission expires:

EXHIBIT D – DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS

(ATTACHED)



City of Phoenix

Disadvantaged Business Enterprise Program

DBE – Construction Manager at Risk (CMAR) and Design-Build (DB) Contract Clause Race & Gender-Neutral – Negotiated

The City of Phoenix has shown a historical commitment to business diversity. The City of Phoenix and its partners strive to advance the economic growth of small and minority businesses through its Disadvantaged Business Enterprises (DBE) Program.

The City of Phoenix DBE Program is managed and administered by the City's Equal Opportunity Department, Contract Compliance Division. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management and technical assistance.

SECTION I. DEFINITIONS

City means the City of Phoenix for purposes of this Contract.

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: <https://utracs.azdot.gov>.

Arizona's Unified Transportation Registration and Certification System (AZ UTRACS) is a comprehensive internet-based business directory containing certified ACDBEs, DBEs and SBCs. The directory includes detailed firm profiles that includes capabilities and geographic locations that can be accessed at: <https://utracs.azdot.gov/Search>.

The City of Phoenix Certification and Compliance System means the web-based certification and compliance system used to track and monitor DBE and Small Business Participation. The system can be accessed at: <https://phoenix.diversitycompliance.com>.

Contract means a legally binding agreement that creates obligation between a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

Equal Opportunity (EO) Compliance Specialist means an Equal Opportunity Department (EOD) employee responsible for DBE Program compliance with this contract.

EOD means the City of Phoenix Equal Opportunity Department.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset, and labor of the participants must be combined in an effort to accrue profit.

Outreach Efforts means the diligent and good faith efforts demonstrated by a Submitter to solicit participation from interested and qualified DBEs and other Small Businesses. Submitter must identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and other Small Businesses participation, disclose results of negotiations with DBEs and other Small Businesses, and communicate and record Submitter's selection decisions relating to DBE and Small Business participants.

Bidders List means a list created by the submitter, consisting of information about all DBE and non-DBE firms that bid or quote on the project. The list should include the firm's name; address; firm's DBE or non-DBE status; race and gender information for the firm's majority owner; NAICS code applicable to each scope of work the firm sought to perform in its bid; age of the firm; and the annual gross receipt of the firm.

Disadvantaged Business Enterprise (DBE) means a for-profit Small Business Concern, that has at least 51% owned and controlled by individuals or individual who are socially and economically disadvantaged, that have successfully completed the DBE certification process and have been granted DBE status by a UCP member pursuant to the criteria contained in 49 CFR Part 26.



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Commercially Useful Function (CUF) means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE Subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

Goods and Services Providers are firms that provide goods and services that represent a CUF as a DBE or Small Business.

Manufacturer means a firm that owns (or leases), operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer.

Regular dealer/Supplier is a firm that owns (or leases) and operates a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.

Broker is a firm who arrange, facilitate, or expedite transactions.

Small Business Concern (SBC) means with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). "Small Business" and "Small Business Concern" are used interchangeably in this DBE Contract Clause.

Small Business Enterprise (SBE) means a for-profit Small Business that has been determined to meet the requirements for SBE certification with the City of Phoenix and whose certification is in force at the time of the award of business by the City. A directory of currently certified SBE firms is located at: <https://phoenix.diversitycompliance.com>

Race- and Gender-Neutral (RGN) Measures means a measure or program that is or can be used to assist all Small Businesses.

Subcontract means a contract at any tier below the prime contract, including a purchase order.

Subcontractor means a firm that holds a contract/agreement between a firm and a lower tier contractor, including a vendor under a purchase order.

Submitter means a contractor, corporation, or firm that tenders a submittal to the City to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative. (Submitter is inclusive of the terms: *Bidder, Offeror, Proposer, Respondent*, etc.)

Responsive Submitter means a firm that has met and submitted the solicitation requirements.

Successful Submitter means a firm that has been awarded the contract by the City to perform services or furnish supplies requested by a solicitation or procurement.

Responsible Submitter means a firm that has been selected to continue in the procurement process by the City.

Contractor means the submitting firm that was awarded the given contract with the City, to perform the work or service as specified by the contract.



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SECTION II. GENERAL REQUIREMENTS

A. Applicable Federal Regulations

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the City must track and report DBE participation that occurs as a result of any procurement, goods/services, or other arrangement involving a DBE. For this reason, the Contractor must provide all relevant information to enable the required reporting.

B. DBE Participation

For this solicitation, the City has *not* established a race- or gender-*conscious* DBE participation goal. The City extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for business. The City uses race- and gender-*neutral* measures to facilitate participation of DBEs. The City strongly *encourages* each Submitter to voluntarily subcontract with DBEs to perform a Commercially Useful Function (CUF) for the part of the work that the Contractor might otherwise perform with its own forces.

C. Counting DBE Participation

The City will count DBE participation as authorized by federal regulations. A summary of these regulations can be found at www.ecfr.gov (49 CFR Part 26.39 and Part 26.55).

D. DBE Certification

Only firms (1) certified by the AZUCP or another UCP member or another UCP member, and (2) contracted to perform a Commercially Useful Function (CUF) on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract.

E. Civil Rights Assurances

As a recipient of USDOT funding, the City has agreed to abide by the assurances found in 49 CFR Parts 26. Each Contract signed by the City and the Contractor, and each Subcontract signed by the Contractor and any Subcontractor, must include the following assurance verbatim:

- a. "The contractor, sub recipient or Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor must 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.
- b. The contractor, sub recipient or Subcontractor agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR, Part 26, that it enters and cause those businesses to similarly include the statement in further agreements."

F. Nondiscrimination/Equal Opportunity

The City will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Parts 26, on the basis of race, color, sex, or national origin.

In administering its DBE program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

The City further agrees to meet the nondiscrimination requirements provided in 49 CFR Part 26, §26.7 with respect to the award and performance of any agreement, contract or Subcontract.

The City will take all necessary and reasonable steps to ensure nondiscrimination in the award and



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administration of contracts and agreements covered under the DBE Program.

G. DBE Open-Ended Participation Plans

Submitter must submit a DBE Open-Ended Participation Plan (OEPP).

OEPP must include a narrative of their commitment to use good faith efforts and provide details of the types of subcontracting work or services (with projected dollar amount) that the Submitter will solicit DBEs to perform. The OEPP must include an estimated time frame/schedule in which the subcontracted work to be performed by the DBE will be accomplished.

Once the contract is awarded, the City and the Contractor may agree to make written revisions to the OEPP throughout the life of the project. The City will monitor and evaluate whether the Contractor is using good faith efforts to comply with the OEPP and the schedule. The Contractor must submit a revised OEPP on an annual basis and/or at the start of every GMP (as applicable) to meet the Contractor's small business utilization commitment.

H. Required Outreach Efforts

The City has implemented outreach requirements for this contract. Specifically, each contract must:

- (1) identify small-business-participation opportunities, including Commercially Useful Functions (CUF);
- (2) actively solicit proposals from small businesses;
- (3) evaluate small-business proposals; and
- (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal.

If a Contractor fails to conduct these Outreach Efforts or fails to submit the required documentation of Contractor's Outreach Efforts as indicated, the City may determine that the Contractor is noncompliant.

SECTION III. PRE-AWARD SUBMITTAL REQUIREMENTS

A. Form EO1 - 100 – Statement of Outreach Commitment

At the time of bid submittal Submitter must sign, date, and submit a completed Form EO1 - 100 Statement of Outreach Commitment, with its initial qualifications-based submittal.

B. Form EO2 - 100 - Small Business Outreach Efforts and Bidders List

Within five (5) business days after bid submittal Submitter must complete and submit **Form EO2 – 100 Small Business Outreach Efforts and Bidders List** documenting its diligent, earnest outreach efforts for subcontracting work, as described in this clause.

Form EO2 – 100 and all supporting documentation are due to the EOD at time of initial qualifications-based submittal.

Submitter must list all DBEs and all Small Business Concerns (SBC)s contacted by the Submitter. Submitter must also provide the following minimum information to document its Outreach Efforts and Bidders List in the designated columns within Form EO2 - 100:

1. Column A - Small Business Name and Contact Information

Must list each business's full legal name and contact information, including address, phone number and email and/or fax. Submitter must inquire to obtain the following: the number of number of years in business, its range of annual gross receipts, gender of majority owner and race of majority owner.

2. Column B - Business Status (DBE, SBC, SBE)

Indicate the business status. Check all that apply, if known.

- The official DBE database containing eligible DBE and SBC firms can be accessed at: <https://utracs.azdot.gov>.
- City of Phoenix SBE Certification Directory can be accessed at: <https://phoenix.diversitycompliance.com>.



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3. Column C - Scope(s) of Work Solicited

List the NAICS Cods and scope(s) of work solicited for which the small business was considered for participation in the proposal. The solicitation must include a description of the scope(s) of work being requested.

4. Column D - Solicitation Method

Indicate the solicitation method by which each Small Business was contacted for your outreach efforts and provide supporting documentation. Supporting documentation must include a copy of the actual solicitation sent to DBE. The solicitation may be in the form of letters or attachments to email, phone logs, newspapers, websites, and trade papers, outreach events, etc. If using a log as supporting documentation, it must include:

- List the Solicitation Method
- Name of Submitter's Representative
- Name of Company Contacted
- Name of Person Contacted
- Company's Contact Information Used to Reach the Company (e.g. phone number, email)
- Date and Time of Contact
- Details of the Communication

5. Column E - Selection Decision

Indicate the Submitters selection decision for each small business that responded to the solicitation.

Whether or not a firm was selected.

If not selected, provide an explanation of why the firm was not selected.

If selected, indicate the Dollar Value.

6. Column F - Method of Communication of Final Selection Outcome

The Submitter must notify the final selection outcome to all Small Businesses that responded. The supporting documentation for this notification may be in the form of an email, letter, or a telephone log, etc. This documentation must show the following information regarding the final selection:

- Date firm was notified of outcome
- Method used to communicate selection:
 - Email
 - Phone
 - Fax
 - Letter
 - In person

*Submitter must provide supporting documentation that shows Submitter has communicated its final selection decisions and outcomes to all DBEs and Small Businesses, including those not chosen to participate in this Contract.

C. Form EO3 - 100 DBE Utilization Commitment

Within five (5) day after bind submittal, the Submitter must complete, sign, date and submit EO3 – 100 DBE Utilization Commitment, which commits the Submitter to the City as follows:

1. The firms indicated as "Selected" on Form EO2 - 100- Small Business Outreach Efforts and Bidders List, will participate in this Contract;
2. The Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Submitter understands and agrees that any and all changes or substitutions to Subcontracts with DBEs and Small Businesses must be authorized by the EO Compliance Specialist prior to implementation; and



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4. The following statement is true and correct: The proposed total participation of DBE, SBE, SBC firms on this contract will be designated on Form EO3 -100 by the Submitter.

D. Open- Ended Participation Plan

Within five (5) business days after bid submittal, the Submitter must complete a DBE Open-Ended Participation Plan (OEPP). The OEPP must contain strategies to foster small business participation and information concerning the small businesses.

Every year on the anniversary date of the executed contract and/or at the start of every GMP (as applicable) the Contractor must provide the City with an updated OEPP detailing the Contractor's continued commitment to utilizing DBEs. The OEPP must contain updated strategies to foster small business participation and information concerning the participation of small businesses, including any changes to the initial EO2-100 and EO3-100.

E. Failure to Submit Forms EO1 -100, EO2 - 100 and EO3- 100, and the OEPP

Submittals that do not have these forms completed and signed will be deemed nonresponsive. A nonresponsive submittal will be disqualified from further evaluation.

F. Failure to Meet Outreach Requirements

The EOD Compliance Specialist will determine, in writing, whether the Submitter has satisfied all outreach requirements. If the EO Compliance Specialist determines the Submitter failed to satisfy the outreach requirements, then the EO Compliance Specialist may determine the submittal is nonresponsive. A determination of non-responsiveness *disqualifies* Submitters from further consideration for the Contract award. The City must send written notice to Submitter stating the basis for the EO Compliance Specialist's decision.

G. Administrative Reconsideration

In the event that the EOD determines the Submitter failed to submit required and completed documentation to meet the DBE Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification of documentation submitted with the bid.

Within seven (7) business days of being informed by the EOD that the Submitter is not responsive based on insufficient demonstration and/or incomplete documentation of Outreach Efforts, the Submitter may submit its written request for administrative reconsideration to:

**City of Phoenix Auditor or Designee
City Auditor Department
140 N. Third Avenue
Phoenix, AZ 85003
Phone: (602) 262-6641
Fax: (602) 534-1533**

TTY: 7-1-1 Friendly

If the request for Administrative Reconsideration is not submitted within the allotted seven (7) business days, the non-responsive Submitter will not utilize the DBE Program submittal requirements as the basis for its future protest.

As part of this reconsideration process, the Submitter will have an opportunity to provide written clarification or argument concerning the issue of whether it met the Outreach Requirements or provided sufficient supporting and completed documentation of good faith efforts at the time of bid. The City Auditor or Designee will review solely the written clarification or argument, along with any document(s) originally submitted at the time of bid. No new or revised forms or supporting documentation will be reviewed for consideration.

The City Auditor or designee will send the Submitter a written decision on the reconsideration, explaining the basis for finding that the Submitter did or did not meet the DBE Outreach Requirements. The result of the reconsideration process is not administratively appealable and cannot be escalated or included in any other protest not related to the DBE Program.



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SECTION IV. POST-AWARD GENERAL REQUIREMENTS

The City has implemented outreach efforts requirements for this Contract. Specifically, the Contractor must:

- (1) identify small-business-participation opportunities, including Commercially Useful Functions (CUF);
- (2) actively solicit proposals from small and minority businesses;
- (3) evaluate small-business proposals; and
- (4) communicate selection decisions to small and minority businesses, including each rejection of a small-business proposal.

A. Subcontracting Commitment

The Small Business Subcontractors identified and accepted in the Small Business Outreach documents must have an executed contract in place prior to the performance of work. Executed contracts and all lower tier contracts must contain the required Civil Rights Assurances and Prompt Payment provisions.

The Contractor will submit to the EOD, through the City of Phoenix Certification and Compliance System, all executed contracts, purchase orders, subleases, agreements, and other arrangements formalizing agreements between Contractor and all Subcontractors, upon execution throughout the life of this contract.

The Contractor will not terminate any approved or DBE Small Business Subcontracts, nor will the Contractor alter the scope of work or reduce the Subcontract amount, without the EO Compliance Specialist's prior written approval. Any request to alter a DBE Subcontract must be submitted in writing to the EO Compliance Specialist before any change is made. If the Contractor fails to do so, the City may declare the Contractor in breach of contract.

B. Counting Small Business Participation

The Contractor may only count expenditures for certified DBE Subcontractors that perform a Commercially Useful Function (CUF), in the NAICS Codes in which it is certified or verified in, on the contract. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for material itself. A DBE Subcontractor must perform or exercise responsibility for at least 30% of the total cost of its Subcontract value with its own workforce and equipment before its participation can be counted. DBEs must manage and control the performance of its contract and not be dependent on the prime's personnel and equipment to complete its work. Scope(s) of work not covered in the DBE firm's certification description **will not** be counted as DBE participation.

C. Commercially Useful Function (CUF) & Counting of DBE Trucking/Hauling

49 CFR Part 26.55 Section (d) defines CUF and the counting of DBE participation Trucking/Hauling as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose achieving DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.



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The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the value of these hauling services.

D. Counting DBE Certified Manufactures, Suppliers, and Brokers:

49 CFR Part 26.55 Section (e) permits the counting of expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a **DBE manufacturer**, count 100 % of the cost of the materials or supplies toward DBE participation.
- If the materials or supplies are purchased from a **DBE regular dealer (supplier)**, count 60% of the cost of the materials or supplies, including transportation, toward DBE participation.
- If materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, **(packager, broker, or manufacturer's rep.)** count 40% of materials or supplies (including transportation costs toward DBE participation.

If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the City will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Any work performed under a Contract extension granted by the City may not be counted as DBE participation. If a DBE's certification is lost while under contract with a Contractor, solely because the DBE exceeded the size standard during the performance of the contract, the DBE's performance may count toward the contract goal. If a DBE is decertified because it was acquired by or merged with a non-DBE, the continued performance of the now non-DBE may not count toward the contract goal. If this negatively impacts the Contractor's ability to meet the contract goal, in good faith, the Contractor is strongly encouraged to Subcontract with other DBEs.

E. DBE Substitutions

If the DBE was approved by the EOD, the EOD Compliance Specialist will consider whether or not the Contractor has exercised diligent and good-faith efforts to find another DBE replacement. The Contractor will notify the EO Compliance Specialist in writing of the necessity to substitute a DBE and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE may not occur before the EO Compliance Specialist's written approval has been obtained.

F. Relief from Proposed DBE Utilization

After Contract award, the EOD will not grant relief from the proposed DBE utilization except in extraordinary circumstances. The Contractor's request to modify Small Business participation must be in writing to the EO Compliance Specialist.

Contractor's written request must set forth the amount of relief sought, evidence that demonstrates why relief is necessary, and any additional relevant information that the EO Compliance Specialist should consider. The Contractor must include with the request all documentation of Contractor's attempts to Subcontract with the DBE and any other action taken to locate and solicit a replacement Small Business.

G. Prompt Payment of Subcontractors

The prompt payment clause must be included in every contract and Subcontract.

The Contractor must promptly pay its Subcontractors, subconsultants, subconsultants or suppliers. **For projects governed by 49 CFR, Part 26 payment must be made within five (5) calendar days** after the Contractor has received payment for scope of work completed by the Subcontractor. If the Contractor diverts any payment received for a DBE's work performed on the Contract or fails to reasonably account for the application or use of the payment, the City may declare the Contractor in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Contractor must ensure prompt and full payment of retentions to Subcontractors and suppliers. The Contractor must pay each Subcontractor's and supplier's retention no later than 30 days the satisfactorily completion of and scope of work, and after the City has paid for



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the scope(s) of work. If the City reduces the Contractor's retention, the Contractor must correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Contractor from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

SECTION V. RECORDS & REPORTING REQUIREMENTS

A. Records

During performance of the Contract, the Contractor must keep all records necessary to document DBE participation. The Contractor must provide the records to the EOD within 72 hours of the EOD's request and at final completion of the Contract. The EOD will prescribe the form, manner, and content of reports. The required records include:

1. All bidders' information to include firm's name; address; DBE or other status; race and gender information for the firm's majority owner; NIACS code(s) applicable to each scope of work the firm sought to perform in its bid; age of the firm; and the annual gross receipt of the firm.
2. A complete listing of all Subcontractors and suppliers on the project.
3. Each Subcontractor's and supplier's scope performed.
4. The dollar value of all Subcontracting work, services, and procurement.
5. Copies of all executed Subcontracts, purchase orders, invoices, and Subcontractor receipts.
6. Total operating expenses and total costs of goods sales.
7. Copies of all payment documentation and Change Orders.

B. Reports

Contractor is required to file the following payment reports in the City of Phoenix Certification and Compliance System:

1. **Progress Payments:** By the 15th of *each* month, the Contractor must enter payment information and related supporting documentation into the City of Phoenix Certification and Compliance System.
 - a. The total of all payments received from the City during the previous month.
 - b. All payments made to Subcontractors during the previous month.
 - i. Supporting documentation to corroborate the payment amounts, which include but not limited to invoices and pay receipts.

The Contractor is responsible for ensuring that Subcontractors confirm receipt of payment in the City of Phoenix Certification and Compliance System by the end of each month.

2. **Final Payment:**

Before the City processes the Contractor's final payment and/or outstanding retention held against the Contractor, the Contractor must notate in the City of Phoenix Certification and Compliance System:

- a. The payment to each Subcontractor is considered "Final".
- b. Every Subcontractor must confirm they have received full and "Final" payment in the City of Phoenix Certification and Compliance System.
- c. For federal reporting purposes, Attachment E must be completed and signed by the Successful Submitter and DBE firm(s) prior to Successful Submitter receiving final payment.

For federal reporting purposes, the Certification of Final Payment must be completed and signed by the Contractor and DBE firm(s). The Contractor is responsible for ensuring that Subcontractors confirm the receipt of full and "Final" payment in the Phoenix Contract Compliance System.



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**FORM EO1 - 100 - STATEMENT OF OUTREACH COMMITMENT
(Due with initial submittal)**

Project Number: ST87600140 RAISE	Project Title: Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge 2-Step Construction Manager At Risk Services
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(READVERTISE)

On behalf of the Submitter, I certify under penalty of perjury that the following information is true and correct.

If selected as the Successful Submitter, the Successful Submitter will:

- 1) Fulfill all required small business outreach requirements and shall submit all required outreach efforts documentation for contracting opportunities within 30 days or a date determined by the City following contract award recommendation;
- 2) Conduct all required small business outreach and will submit all supporting documentation; and
- 3) Comply with the Race - and Gender-Neutral post-award requirements stated in the DBE Contract Clause.

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____

Date: _____

**Disadvantaged Business Enterprise (DBE) Program
Form EO2 - 200 - SMALL BUSINESS OUTREACH EFFORTS AND BIDDERS LIST**

Name of Company (Submitter):	Contract # / Project #: ST87600140 RAISE	Contract Name: Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge 2-Step Construction Manager At Risk Services
Contact Person:	Phone #:	Email: (READVERTISE)

Successful submitter must conduct outreach efforts and submit supporting documentation of those efforts, as described in the 49 CFR Part 26, in accordance with the detailed instructions in the Contract Clauses. Successful submitter should make copies of this form as needed. **Sections A, B, and C must be completed for all businesses which includes ALL BIDDERS.**

Sections D, E, and F are required to be completed for **all DBE and SBE firms**. Supporting documentation is required for columns D and F.

(A) Small Business Name and Contact Information	(B) Business Status	(C) Scope(s) of Work Solicited	(D) Solicitation Method	(E) Selection Decision	(F) Communication Final Selection Outcome												
<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td colspan="2">Name:</td></tr> <tr><td colspan="2">Address:</td></tr> <tr> <td style="width:70%;">City, State, Zip:</td> <td style="width:30%;">Number of Employees:</td> </tr> <tr> <td>Phone Number:</td> <td>Email or Fax:</td> </tr> <tr> <td>Number of Years in Business:</td> <td>Range of Annual Gross Receipts:</td> </tr> <tr> <td>Gender of Majority Owner:</td> <td>Race of Majority Owner:</td> </tr> </table>	Name:		Address:		City, State, Zip:	Number of Employees:	Phone Number:	Email or Fax:	Number of Years in Business:	Range of Annual Gross Receipts:	Gender of Majority Owner:	Race of Majority Owner:	<input type="checkbox"/> DBE <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> SBE - City of Phoenix Certified	NAICS Codes and Scope(s) of Work:	<input type="checkbox"/> E-mail Blast <input type="checkbox"/> Phone Call <input type="checkbox"/> In-Person <input type="checkbox"/> Newspaper <input type="checkbox"/> Website <input type="checkbox"/> Trade Listing <input type="checkbox"/> Outreach Event <input type="checkbox"/> Other	<input type="radio"/> Firm was selected <input type="radio"/> Firm was not selected Provide explanation of why firm NOT selected	Date Firm was Notified: <hr/> Method used to Communicate Selection: <input type="checkbox"/> Email <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Letter <input type="checkbox"/> In person
Name:																	
Address:																	
City, State, Zip:	Number of Employees:																
Phone Number:	Email or Fax:																
Number of Years in Business:	Range of Annual Gross Receipts:																
Gender of Majority Owner:	Race of Majority Owner:																
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Name:																	
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Number of Years in Business:	Range of Annual Gross Receipts:																
Gender of Majority Owner:	Race of Majority Owner:																

***Firms must be notified of final selection outcome prior to submittal of columns E & F of this form.**



City of Phoenix

Disadvantaged Business Enterprise (DBE) Program

FORM EO3 - 100 - SMALL BUSINESS UTILIZATION COMMITMENT

Project Number: ST87600140 RAISE	Project Title: Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge 2-Step Construction Manager At Risk Services
--	--

(READVERTISE)

On behalf of the Successful Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

1. The firms indicated as "Selected" in **Form EO2 - 100 - Small Business Outreach Efforts**, will participate in this contract;
2. The Successful Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Successful Submitter understands and agrees that any and all changes or substitutions to subcontracts with DBE's and Small Businesses **must** be authorized by the Phoenix DBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct:

The proposed total participation of firms on this contract will be:

DBE: _____ %

SBE: _____ %

SBC: _____ %

Company Name: _____

Company Mailing Address: _____

Representative Name: _____

Title: _____

Email Address: _____

Phone Number: _____

Signature: _____ Date: _____

EXHIBIT E – PROJECT LOCATION

Figure 1

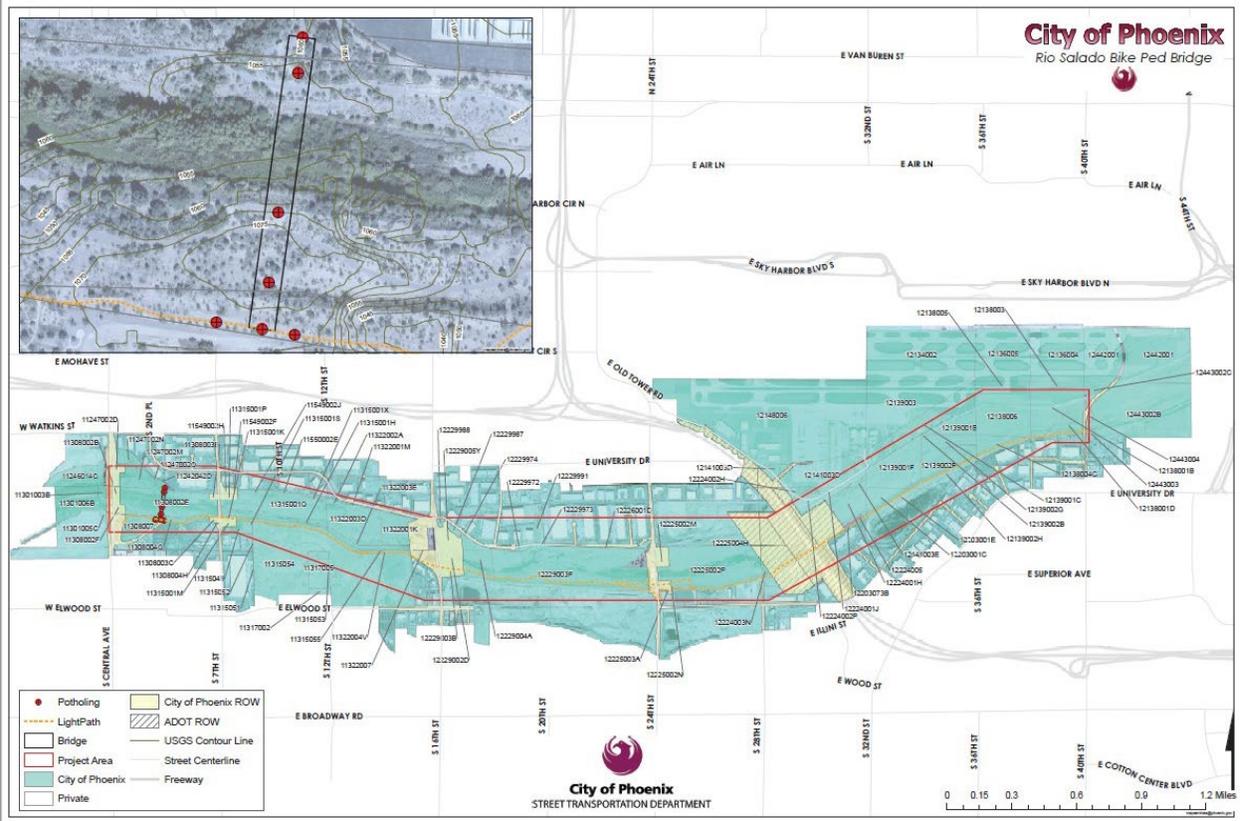


EXHIBIT F – BRIDGE SELECTION REPORT

(ATTACHED)



Bridge Alternative Selection Report

FOR

3rd Street Rio Salado Bike/Pedestrian Bridge & Pathway

City of Phoenix Project Number: ST87600140

SEPTEMBER 2024

Prepared for:



Prepared By:

TYLin

With support from:





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1.0 INTRODUCTION

1.1 Overview

The primary purpose of this Bridge Alternative Selection Report is to establish a record of selection for the preferred alternative following multiple rounds of stakeholder and public engagement. The selection will advance through a formal design process completing the previously studied and selected alignment during the design concept phase.

Previous pre-design reports have been produced on the purpose, need, alignment study, and design concept. Design concept deliverables are on record with the City of Phoenix (reference Project No. ST87600135). The project has matured to final design and construction with progress ongoing and scheduled to have final plans completed by April 2026 and constructed by December 2028 (reference Project No. ST87600140). These previous stages of the project progressed to provide the necessary preparation securing the RAISE grant award for the bridge to be further designed and constructed.

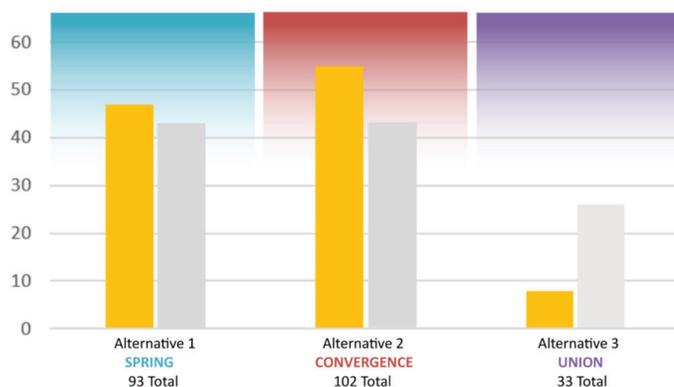
1.2 Preface and Preferred Selection

The bridge alternatives developed during the formal design phase were conducted out of a recognition that the pre-design concepts previously developed lacked finalized community consultation. The pre-design preferred alternative did serve a purpose to be specific enough as a proof of concept and secure funding allowing the project to maintain progress despite a global pandemic (COVID) barring full engagement.

Once the grant was secured, and with a sense of obligation to further consult the community, the project’s engagement teams designed three engagement strategies tailored to specific audiences that will be further detailed in this report.

The purpose of the diverse engagement strategies detailed later can be best understood in the context of rectifying consultation previously hampered by a pandemic and a commitment to meaningful, inclusive engagement. Summaries of the engagement are provided in [Appendix A](#).

At a summary level, the three (3) alternatives that were developed out of the inspiration of the original concept used to secure funding through a RAISE grant. Of the 3 alternatives developed out of the additional stakeholder engagement, the concepts were known as Spring, Convergence, and Union. Convergence was selected and will be the focus of this report. Survey results excerpt featured in the image.



1.3 Location

The 3RD Street alignment is a north-south corridor midway between Central Ave and 7TH Street. This corridor is receiving significant engineering focus throughout the downtown area across the Rio Salado riverbed for improved all-season bidirectional travel by active transportation purposes. The bridge alignment was selected as part of City of Phoenix Project No. ST87600135.

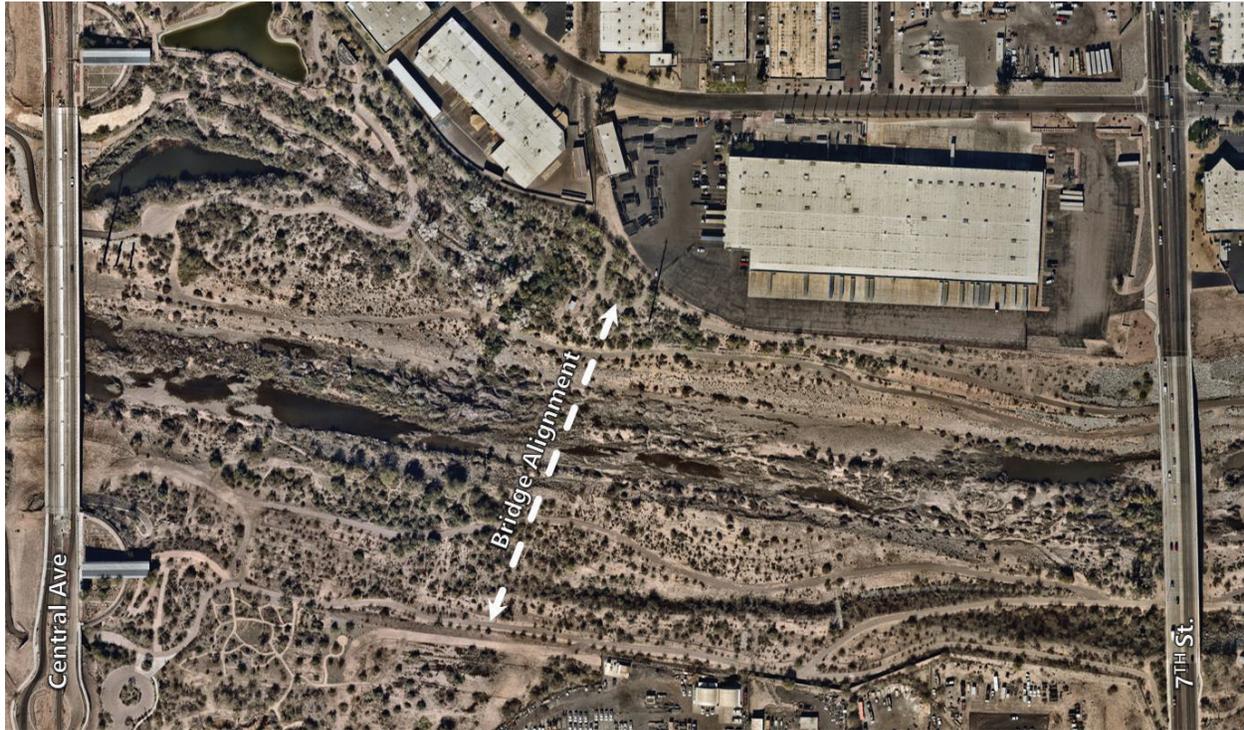


FIGURE 1 – PROJECT LOCATION –BRIDGE ALIGNMENT SHOWN

1.4 Right of Way

The new bridge will be located inside the City of Phoenix jurisdiction. It is not anticipated that new right of way or easements will be required for the construction of this new bridge.

1.5 Environmental

Due to the federal RAISE Grant funding, FHWA National Environmental Policy Act (NEPA) approval is required. Because the Rio Salado Habitat Restoration Area (RSHRA) is a US Army Corps of Engineers (USACE) civil works project, a 33 U.S.C. Section 408 permit will also be required. In addition, the new bridge would cross the Salt River, which is considered Waters of the United States (WOTUS), and any work in the river or adjacent wetlands would require a USACE Section 404 permit. Other primary environmental considerations include potential impacts to species protected by the federal Endangered Species Act, and impacts to the recreational features of the RSHRA that are protected by Section 4(f) of the US Department of Transportation Act of 1966, such as the trails.



The RSHRA is an ecological restoration project and the City of Phoenix has long-term agreements with USACE and the US Fish and Wildlife Service (USFWS) to maintain and/or expanding native habitat for threatened & endangered species and other sensitive species. This project will need to minimize impacts to the RSHRA, particularly regarding wildlife habitat, wetlands, recreational facilities, and nighttime lighting.

This report will not be used for completing environmental documentation or permitting. Environmental resource technical reports and permit applications will be prepared by the City's consultants and reviewed by the City.

Bridge design to-date has been in coordination with the City's Environmental Services and hydrology for refined project scope, limit, and footprint.

A comprehensive roadmap for environmental permitting and clearances are all preliminarily scheduled to occur between August 2024 and April 2026.

1.6 Utilities

All infrastructure planned for the bridge will serve the purposes of the safely connecting people to the pathways. Private utilities are not provided easements. No utility relocations are anticipated as part of this project. Existing overhead power transmission poles present on the north bank need to be protected in place during construction operations. Set-up areas around the poles need to be avoided for above ground improvements in proximity to existing overhead power poles. Construction equipment access clearances to these facilities will need to be coordinated during final design.

Irrigation to water plans on the bridge and power to feed the bridge lighting will be included as part of the project. No other utility crossings are anticipated as part of the project.

2.0 PATHWAY APPROACH AND CROSS SECTIONS

2.1 Existing Pathways

The existing paved pathways along the north and south banks of the Rio Salado have provided east-west regional connectivity in off-street, high comfort conditions for people walking and biking. In all alternatives evaluated, the bridge overcomes the barrier of the Rio Salado in all seasons and weather conditions. The bridge will provide direct connectivity to the paved pathways for riverbed crossings.

Additional north-south active transportation projects are anticipated to further enhance mobility options in the 3rd Street corridor.

2.2 Mobility Design Criteria and Geometrics

The guidelines and criteria used in the development of the pathway section are from the City of Phoenix Street Planning and Design Guidelines Manual, July 2023. The manual is support by



current editions of the American Association of Street and Highway Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities, A Policy on Geometric Design for Highways and Streets, the Manual on Uniform Traffic Control Devices (MUTCD), FHWA Separated Bike Lane Planning and Design Guide, and the National Association of City Transportation Officials (NACTO) Urban Bikeway Design Guide.

Beyond mobility needs for safe movement, there has been a focus on the thermal and environmental comfort for users. Specialized analysts on the team have studied the preferred design alternative to provide insights of site-specific shade and wind that will be factored into design iterations. This is justified based on the goals of a high pedestrian and biking activity level anticipated for the project. Shade coverage of 50% (minimum per MAG resources) up to 70% (per consulting Phoenix Office of Heat Response and Mitigation) are supported in this effort along the span of the bridge.

2.3 Approach and Cross Section

The proposed pathway aligns with a route dedicated to active transport. The proposed crossing of Rio Salado is completely dedicated and optimized for active transport with more North-South travel planned for people on foot or bike in the future.

There are goals for the approach other than mobility which include space for social and cultural programming. These spaces are for small gatherings and artistic expression that embody the environmental, cultural, and historical contexts of the Rio Salado of existing and past cultural expressions.

There is inclusion of space for gathering and public speaking, with outdoor seating curved around a focal point at an outdoor stage. There is inclusion of artistic expressions of traditional shade structures that predate modern and contemporary architecture. Lastly, there is an intention for inclusion of a land acknowledgements from diverse perspectives, bridging history with contemporary conditions in recognition of where people see this site and river in today's context.

2.4 Public Art

Barbara Grygutis was selected by the City of Phoenix to develop public art to be incorporate into the project. As detailed in Appendix A, 3 artwork concepts were presented to the public with the Woven Desert concept selected as the preferred concept. The Woven Desert concept has been incorporated into the preferred bridge concept. The public artist has attended micro-engagements arranged by The Sagrado to refine and develop art concepts for the project. Based on input from members of the Akimel O'odham tribe the laser cut panels echo the Creosote Bush. The laser cut panels were designed by the public artist to provide shade coverage of 75%.

2.5 Community and Stakeholder Engagement

Summaries of the engagement are provided in [Appendix A](#). There were three (3) levels of intentional engagement to inform the design decisions appropriate through engagement that built from the engagement takeaways learned during the pre-design phase.

First level of engagement was the most involved. It was organized as a Design Charrette inviting key stakeholders from City staff and long-term community leaders with significant backgrounds in their respective interests. Interests included bike advocacy, park and trail maintenance, community representation, ecological stewardship, continuity with previous planning efforts, flood control, engineering, and more. The International Association for Public Participation (IAP2) Spectrum would identify this as a collaborative process with the engagement team arranging the topics of engagement into three tangible topics: aesthetics and architecture, mobility interests, and cultural/ecological interests.

The bridge concepts were developed with feedback collected from the Design Charrette. The three (3) alternatives were then presented at an open house presentation (recorded and posted online for those who could not attend in-person). Content was provided in English and Spanish languages with simultaneous interpretation services available. The engagement level was consulting the broader public about the overall positive and negative impressions to ultimately find the preferred concept. Alternative 2 named “Convergence” ranked the highest on the public survey with Alternative 1 named “Spring” a close second. Moving into the 30% submittal, the design team identified hydrology and access concerns at the south bank that resulted in moving the gathering area/amphitheater to reflect the location illustrated in Alternative 1. Some blending of the concepts are ultimately moving forward in design. Along with the bridge alternatives, artwork paired with the bridge was also surveyed considering three (3) unique sculptures as entry features. The 3 concepts were named Woven Desert, Shadow Pattern, and Cloud Pavilion. Woven Desert was selected to move forward with the preferred bridge alternative. Scale, placement, patterns, and materials are all being refined to align with this preference.



Public viewing of concepts from Open House

Finer details of cultural and artistic impressions are being conducted at the most intimate level of engagement. This engagement is being facilitated by community partners, The Sagrado. Small group discussions are intended to bring grassroots, community-based knowledge and representation to the project. These insights are being reflected in design details that will enhance the experience of people within these spaces. A key interest group within these settings is to understand symbology and authentic messages of tribal communities of the area as well as the contemporary multicultural impressions of the current community. Engagement of this nature has sought and will continue to seek knowledge exchange between the project team and diverse community groups.

3.0 HYDRAULIC ANALYSIS

3.1 Hydrology

The contributing watershed, to the Salt River, extends up into the White Mountains of eastern Arizona as well as into the Verde River Basin of north-central Arizona. The Verde River is a major tributary to the Salt River joining near Fountain Hills, Arizona. Both the Salt and Verde rivers have numerous tributary rivers. In addition, the Verde river has two dams and storage reservoirs. The Salt River has six dams and associated storage reservoirs. The majority of these dams are owned and operated by the Salt River Project (SRP) who maintains the dams and meter out flow to generate electrical power and for irrigation purposes.

The peak hydrologic event occurs when dam operations open sluice gates to release storm water during wet years when the storage reservoirs located upstream of the dams are at or near maximum capacity. The analysis of hydrologic capacity for all of the interconnected systems is complicated, however, the hydrology and hydraulics of the Salt River have been studied by the Flood Control District of Maricopa County (FCDMC) and designated with a Federal Emergency Management Agency (FEMA) regulatory Zone AE floodplain and floodway. The effective Flood Insurance Study (FIS) identifies the peak discharges within the Salt River as listed in the table below and are graphically presented on the Flood Insurance Rate Map (FIRM) panel number 04013C2215L.

Table 3.1.1 Salt River: Hydrology Summary

Location	10-year Discharge	100-year Discharge	500-year Discharge
	[cfs]	[cfs]	[cfs]
Salt River at 3rd Street	55,000	169,000	243,000

Table 3.1.2 Salt River: 100-yr Hydrology Summary

Location	River Station Cross Section ID	100-year Discharge	Floodplain NAVD 88 WSEL
	[ft]	[cfs]	[elev.]
Salt River at I-10 Bridge (Downstream)	89582	169,000	1097.0
Salt River at 7th Street Bridge (Downstream)	75060	169,000	1069.7
Salt River at 3rd Street (project alignment)	73698	169,000	1067.5
Salt River at Central Avenue Bridge (Upstream)	72602	166,000	1067.2

The proposed project consists of a new pedestrian bridge to be constructed as part of the City of Phoenix’s Rio Reimagined project. The bridge will span the Salt River generally following an

extension of the 3rd Street alignment. The proposed bridge will have a north and south abutment located within the associated overbanks at the edge of the floodplain. There will be a single pier located outside of the main flow channel within the south overbank (see the bridge plans for a rendering and additional details). The bridge abutments and pier will rest on drilled shafts extending below maximum scour depth.

3.2 Bridge Scour

Once the bridge layout is complete, the bridge will be modeled within the effective HEC-RAS hydraulic model to determine the bridge’s impact on the effective floodplain. In addition, scour calculations specific to the project bridge will be prepared.

Until the 3rd Street Pedestrian Bridge is designed and hydraulically modeled, an estimate of the bridge’s potential scour is used for design. The Central Avenue bridge is located approximately 1,100-ft downstream of the proposed project location, therefore, the scour results for this bridge can provide a level of magnitude by which design work is conducted. The Central Avenue bridge scour results are referenced from a recent study prepared by J2 in August of 2017.

Table 3.2 Salt River: Central Avenue Bridge Scour Summary

Location	Storm Frequency	Scour		
		South Abutment	Pier	North Abutment
	[event]	[ft]	[ft]	[ft]
Central Avenue Bridge	100-year	28.5	46.8	20.9
Central Avenue Bridge	500-year	43.5	49.3	29.0

4.0 PREFERRED BRIDGE ALTERNATIVE

The bridge type selection process is an assessment of the functional, project, and site-specific parameters with respect to the economical and practical constraints for various bridge types at any given location. These economical and practical constraints typically are imposed by items such as constructability, construction sequencing, traffic control, structural capacity/performance, roadway geometrics and bridge site constraints. Generally, the bridge types and configurations that are thought to be economical, practical, serviceable, and aesthetically pleasing for that site are evaluated with these constraints taken into consideration. Economics and constructability are typically the governing constraints but on occasion another parameter may have a significant influence on the evaluation. The final recommended bridge type and configuration is that which best meets all the applicable constraints.

Given the high profile of this project and the importance of community involvement, the type selection process was driven by a series of engagements with stakeholders and the public. Feedback received from these engagements directly led to the type size and location selected for

this signature pedestrian bridge.

The technical design specifications and guidelines followed in the development of this bridge study are:

- AASHTO LRFD Bridge Design Specifications, 9th Edition
- Bridge Design Guidelines, ADOT, current version
- AASHTO Pedestrian Bridge Guide Specification 2nd Edition 2009 with 2015 Interims

4.1 Bikeway and Bridge Geometry

The proposed bridge crosses the Salt River on a tangent alignment nearly perpendicular to the river and connects existing bike paths that run parallel to the river along each bank. The existing paths on each side are 12' and can accommodate two-way bike and pedestrian traffic. The proposed bridge maintains this 12' width to provide ample space for bikes and pedestrians to cross safely. At the main span the 12' width is expanded to provide view platforms on both sides of the bridge with a 10' width center path intended for bikeway travel. The additional width in the main span can be used to rest or take in the scenery without being in the travelled way. In order to provide access for all, the slopes of the path along the bridge are designed to meet the requirements of the Americans with Disabilities Act (ADA) and are kept as flat as practical for ease of use by all.

4.2 Bridge Considerations

Many considerations went into the bridge alternatives that were evaluated for this project. One of the biggest considerations was keeping any permanent bridge components outside of the Waters of the United States (WOTUS) boundary. Doing this requires a long span which is one of the primary reasons for the arch bridge type. Feedback from the stakeholders and public led to the preference for a basket handle type arch with arch ribs that lean in. The bridge width was carefully considered in order to provide safe space for all users. Another major consideration that will be impactful in final design is the scour that will occur at the bridge. Preliminary estimates expect scour to be very deep which will dictate foundations and overall structural schemes.

4.3 Preferred Bridge Alternative

The preferred bridge alternative based on all of the stakeholder and public feedback is a steel crossing basket handle arch bridge with steel girders, steel floor beams, and a reinforced concrete deck. Steel hanger cables will support the main span while the approach span will utilize a reinforced concrete pier. Metal cladding in the upper arch regions will provide shade and architectural interest. Additional shade will come from tensile fabric shade elements that are integrated into the main span between the bridge hanger cables. Safety railing will be provided along the bridge's length and will serve as another source of shade and architectural expression. Reinforced concrete pile caps and drilled shafts will support the structure and provide a robust foundation even if large scour events occur in the river.

4.5 Substructure

The proposed typical section is similar for all the options. Since the geotechnical data is not

available in this assessment, the substructure discussed below is proposed using engineering experience and judgement. All the substructures shall be designed and finalized in the final design based on the provided geotechnical data and hydraulic data.

The pier is a wide oval shape that behaves like a pier wall and is beneficial for hydraulic flow while blending into the bridge architecture. The pier will sit on a 6'-0" deep pile cap supported by four (4) 5'-0" diameter drilled shafts. The arch landing will sit on a 6'-0" deep pile cap supported by five (5) 5'-0" diameter drilled shafts. The South abutment consists of a 1'-0" back wall with an approach slab seat and a 5'-6" wide stem supported by a single row of 2 (2) 5'-0" diameter drilled shafts. The north abutment is similar but a shared foundation with the north arch landing will be utilized consisting of a 6'-0" deep pile cap supported by five (5) 5'-0" diameter drilled shafts.

4.6 Aesthetic Considerations

Referred to as "Convergence", Alternative 2 is named as such for the signature cross over seen in its primary arch rib and delta frame. This geometric move was designed to visually and metaphorically reinforce the concept of unity between South and North Phoenix. The structure emerges from the north bank, crosses over and back across the main span, and then loops up and over the deck as a parabola to function as a gateway from one side of the river to the other. Secondly, the structure's form was highly focused on producing ample amounts of shade to the pathway and space below. By crossing over the arch members, the design becomes stable structurally while at the same time widening the overhead roof canopies. These canopies feature laser cut aluminum cladding displaying silhouettes of the Creosote Bush found on site. From the exterior this yields a shimmering metal system that enhances the visual quality of the project while on the interior the experience is like walking beneath a tree canopy where light is filtered and projected down to the deck below.

From north to south, the deck features a constant 12' wide deck that widens into an "S-Curve" in the main span. In this region the 12' wide common path narrows to 10' but features entrances to the overlook regions that are buffered by 2' wide planters. Beyond the main span the pathway widens back to 12' and then opens in the south approach to frame an amphitheater and native garden at the center. In the overlook users will find a series of benches staggered between the cables and a PTFE shade canopy that stretches parabolically back and forth from one side of the overlook to the other. While contributing to the shade performance of the space, this canopy frames the longitudinal perspective like a natural "cathedral" flanked by overlook transepts. In the overlook, the railing system morphs from its constant section into a taller system that provides shade to bench users when the sun is low in the sky.

The south approach features an amphitheater nestled between two 8 ft wide approach pathways on the perimeter. At the base, the amphitheater features a seating and stair arrangement that emerges from the landscape in the silhouette of an agave. The stair then leads to a central plaza at the top that features a series of arrayed sculptures that provide shade and a southern terminus. This plaza is further enhanced by the blue deck treatment that stretches from there across the bridge to a northern terminus sculpture that ties the whole project together. This blue treatment is meant to be



reminiscent of the flowing water in the river and starts at either end as a long and large amplified sine wave that incrementally decreases in length and amplitude as it enters the main span and overlook to signify to cyclist and runners to slow down.

Renderings depicting the preferred alternative are provided in [Appendix C](#).



APPENDIX A – PUBLIC INFORMATION AND OUTREACH SUMMARY

The 3-level engagement of Stakeholder and Public Engagement can be summarized as so:

1. Design Charrette conducted with Staff and Community Leaders with long-term interest and engagement on this project.
2. Public Open House and Public Survey open to all.
3. Micro-Engagements with focus groups and information gathering.

Summaries of these engagements follow this cover page.



3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback

I. Design Charrette Background

Early consultations between the City staff and the consultants leading the bridge design visited the scope and timeline to confirm that it was in the best interest of the project to hold a design charrette as the earliest phase of the design refinement process.

I think Design charrettes are collaborative engagements between stakeholders and designers. The engagement goal was to reacquaint stakeholders with the vision and interests of the project, become acquainted with the preferred alternative selected from the design concept phase, and collaborate regarding value-added details to complement the project and complete the concept. The preferred alternative was assessed and selected in the initial concept development stage, as documented in the September 2022 Final Project Assessment Report as part of the Phoenix/MAG Design Assistance project (project numbers: Phoenix ST87600135 and MAG PHX-21-DA-001).

Scope and Schedule



A scope and schedule were collaboratively defined and executed by TYLin and City Project Management and City Streets Communications & Public Engagement lead.

II. Day 1: Listening Session

Wednesday, May 8, 2024, the Listening Session was held at Burton Barr Central Library's College Depot (2nd Floor) from 9:00 AM – Noon.

Listening sessions were organized by three topics, each with dedicated time. The structure was intended to respect stakeholder's time, if they had specific scope interests. The structured time to review topics also paid respect to a wide range of viewpoints and inspiration. Invitees included a diverse set of stakeholders including long-involved city departments and community organization leaders. Appendix [.] offers documentation of the sign-in sheets from the day.

Topics for listening sessions were structured as follows:



3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback

9AM Mobility needs (Bike + Pedestrian) and physical connections

10AM Architecture, Aesthetics, Materials

11AM Experience, Culture, Wildlife, and Programs

III. Day 2: Design Charrette

Friday, May 10, 2024 the Design Charrette was held at Burton Barr Central Library’s Pulliam Auditorium from 11:00 AM – 4:00 PM.

Day 2 started with a quick meal (necessary due to the length of time dedicated to engagement) and proceeded with an overview by charrette facilitators to provide more background researched during the project assessment phase and reflections of what was shared on Day 1. Design Charrette stations were organized by the same three topics, each with dedicated “stations” (tables and facilitators) and unique engagement methods appropriate for each topic. All participants were invited to cycle through all 3 stations rotating every 70 minutes through rounds of engagement with small breaks in-between.

The station dedicated to **mobility and physical connections** charrette exercises are to inform wayfinding and future corridor connections to the bridge. Facilitators sought to:

1. Measure the stakeholder knowledge of how to enhance the connectivity between the bridge project and the broader mobility patterns within and through the adjacent communities.
2. Assess the conceptual deck cross-section that accommodated mobility and experiential enhancements.
3. Collaborate on designing elements to provide a sense of arrival at the entryways to the bridge.

Methods of facilitation involved two focus areas. At one, participants sketching embellishments on stripped back models of the concept. Multiple scenes were provided to provide various scenes and viewing angles along the project. At the other, participants were asked to identify locations and mobility corridors that connect to the bridge. Maps were used to pin locations and strands of colorful yarn provided conceptual direct routes. Notes were taken on large standing note pads and priority notes were highlighted as a group.



3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback

The station dedicated to **architecture, aesthetics, and materials** were facilitated to discuss possible iterations that could be derived from the preferred concept. Facilitators discussed options for the superstructure, material, and experiences outside of the mobility needs on the bridge deck.

Methods for engagement involved the bridge architect sketching on a large standing note pad. Participants spoke to what variations they would like to see to the superstructure, shading elements, main span section features, and bridge deck treatments.

Finally, the station dedicated to **experience, culture, wildlife, and programs** sought to reveal unique interests by a variety of stakeholder groups. The method of engagement was facilitated conversation with issues discussed openly and thoroughly with shared notetaking on the large standing notepad.

IV. Feedback Summary

All collected materials are scanned and documented in *VI. Scanned Documents*. Stand-out feedback will be summarized by the same 3 topics used to structure the charrette.

The station dedicated to **mobility and physical connections** noted there ample more opportunities for people-friendly destinations in the area as it transitions through redevelopment. However, contrasting the destinations on the north or south side of the Rio Salado revealed a lot more valued destinations on the north side. Notable locations included the Audubon Center, Academia Del Pueblo (school that houses Friendly House where social services focus on special needs of immigrants), and large employers (like Amazon Distribution Center). Longer bicycle riders noted their preferred low-stress routes for biking for access to South Mountain. There was a strong desire for more corridor planning along the 3rd Street alignment south of the bridge. Desired connections include direct routes between neighborhoods north and south of the bridge. Equitable considerations were pointed to ensuring safe connections to the affordable housing communities.

The bridge deck itself was accepted as adequate in width, however stakeholders desire clear allocation of uses within the section to help people properly share the space, as people will be moving at different paces, and some will be lingering and enjoying the views. Paths that provided access to the bridge should be designed to promote more natural routes (not 90-degree turns) and the slopes at the edges of the paths were suggested to provide a natural opportunity for tiered seating and outdoor gathering spaces for educational programming.





3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback

The station dedicated to **architecture, aesthetics, and materials** heard a strong emphasis to ensure **shade** is provided throughout the day and that materials are thermally appropriate to the touch. Whereas the base concept only planned shade from above, more interest in bringing shade down to people for extended hours was desired with the side panels offering another surface of interest and special opportunity. Other feedback involved:

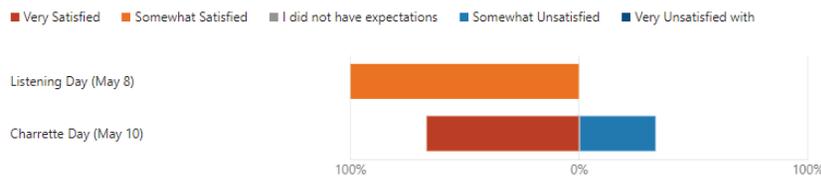
1. Interests in welcoming messages and educational elements to honor the wildlife and cultural history of the original settlers.
2. Vegetation and natural elements to blend with the modern metals.
3. Seating, resting, viewing angles to be considered.
4. Avoid graffiti-prone surfaces.
5. Offer a sense of safety and care. Add trash cans to help inspire a sense of community stewardship.
6. Concerns lighting would negatively impact wildlife.
7. Foster nesting zones where appropriate.
8. Concerns with clashing designs of both elements of this bridge and nearby light rail station at Central Ave.

The station dedicated to **experience, culture, wildlife, and programs** heard there is a lot of opportunity to bolster pride of history and the special features of the community and Rio Salado. The bridge is a direct investment to physically bring people together and there is a multicultural opportunity to bring people together through artistic expression and placemaking.

A post-event survey was circulated by email after the event. However, with only three responses, insights are inconclusive.

3. Were you satisfied with the experiences and of the charrette?

[More Details](#)



A single point of feedback noted that some voices may have gone unheard.



3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback

Responses

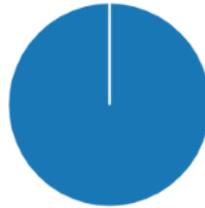
During the event on Friday 5/10, the conversations were dominated by a few participants and not everyone was heard it seemed to me. The mediator/group leader could have guided the conversations better.

However, the three survey participants themselves reported they personally were able to express themselves freely during the charrette.

8. Were you able to express yourself freely during the charrette?

[More Details](#)

● Yes	3
● No	0



V. Photos





3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback





3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback





3RD Street Bridge at Rio Salado

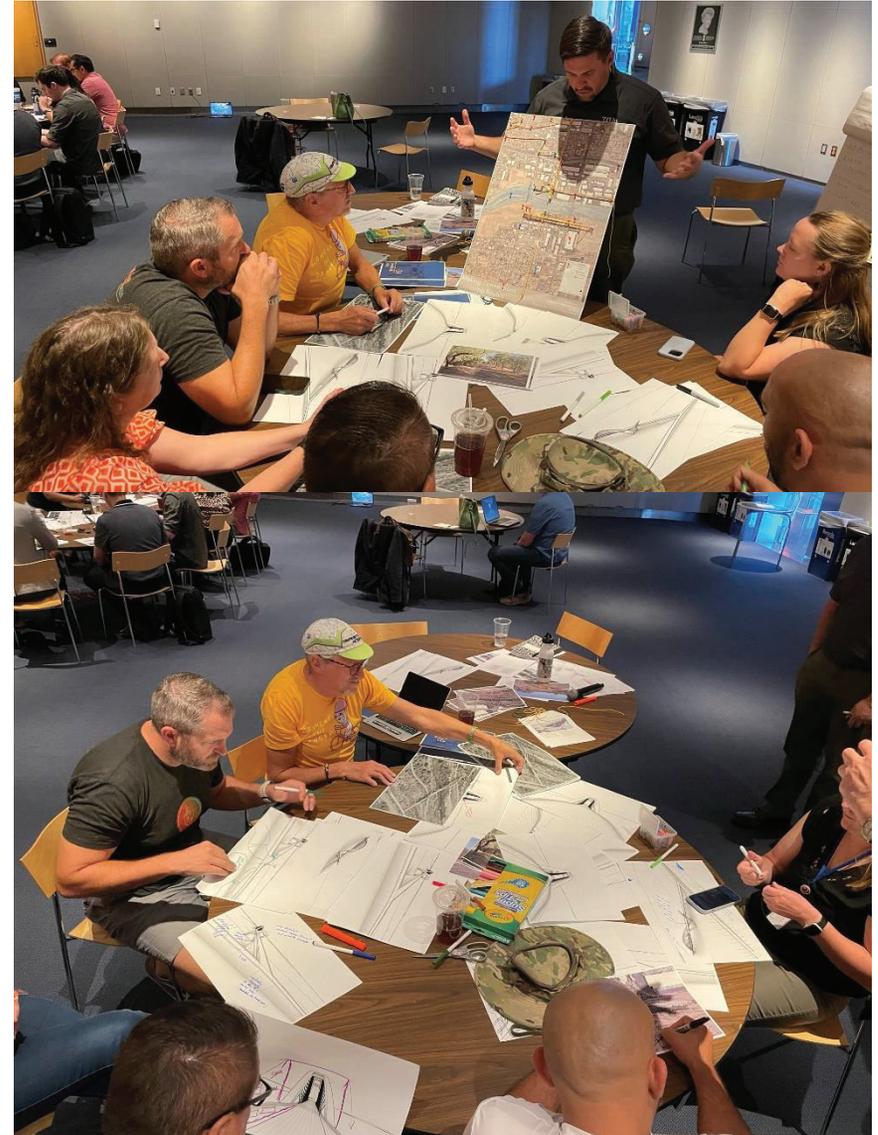
Design Charrette – Engagement summary and feedback





3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback





3RD Street Bridge at Rio Salado

Design Charrette – Engagement summary and feedback

VI. Scanned Documents



Design Charrette – Listening Sessions – May 8, 2024 3rd Street / Rio Salado Bridge

PLEASE SIGN IN (SORTED ALPHABETICALLY BY LAST NAME)

First Name	Last Name	Email address	Hour(s) of Participation
Tricia	Balluff	tricia.balluff@phoenix.gov	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Greg	Blanpied	greg.blanpied@tylin.com	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Enrique	Bojorquez Gaxiola	enrique.bojorquez-gaxiola@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Jessica	Bueno	Jmbueno.08@gmail.com	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Jeff	Caslake	jeff@biketemppe.org	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Eric	Cook	eric.cook@maricopa.gov	<input type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Rene	Corella	recorport@gmail.com	<input checked="" type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Fernando	Felix	fernando.felix@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Aldo	Gonzalez	aldowaldo05@gmail.com	<input type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Sam	Gomez	sam@thesagrado.org	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Barbara	Grygutis	barbara@barbaragrygutis.com	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Samantha	Hacker	samantha.hacker@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Nick	Hammond	nick@nickhammond.com	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Eric	Johnson	eric.johnson@phoenix.gov	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Skitch	Kitchen	skitch.kitchen@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Chris	Milner	christopher.milner@tylin.com	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Tariq	Momika	tariq.momika@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Heather	Murphy	heather.murphy@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Danny	RJ	Daniel.roperjones@audubon.org	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Jarod	Rogers	jarod.rogers@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Brandy	Ruark	brandy.ruark@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Erika	Rubio	erubio@dtphx.org	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Hunter	Ruthrauff	hunter.ruthrauff@tylin.com	<input checked="" type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Bobby	Sokolowski	bobby.sokolowski@tylin.com	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Kelie	Thomas	kelie.thomas@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Kelie	Thomas	kelie.thomas@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Jamie	Trufin	Jamie@phoenixspokespeople.org	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Mojgan	Vahabzadeh	mojgan.vahabzadeh@phoenix.gov	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Jose	Vaquera	jose.vaquera@friendlyhouse.org	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
Ryan	Wozniak	ryan.wozniak@tylin.com	<input checked="" type="checkbox"/> 9AM <input checked="" type="checkbox"/> 10AM <input checked="" type="checkbox"/> 11AM
SASHA	PEREZ	SASHA.PEREZ@phoenix.gov	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM
Rubben	Lolly	Rubben.Lolly@phoenix.gov	<input type="checkbox"/> 9AM <input type="checkbox"/> 10AM <input type="checkbox"/> 11AM



works for art
Barbara Grygutis
BARBARA GRYGUTIS



TYLIN





3RD Street Bridge at Rio Salado
 Design Charrette – Engagement summary and feedback



Design Charrette – Design Day – May 10, 2024
3rd Street / Rio Salado Bridge

PLEASE SIGN IN (SORTED ALPHABETICALLY BY LAST NAME)

First Name	Last Name	Email address	Participation
Tricia	Balluff	tricia.balluff@phoenix.gov	<input type="checkbox"/> In Attendance
Greg	Blanpied	greg.blanpied@tylin.com	<input checked="" type="checkbox"/> In Attendance
Enrique	Bojorquez Gaxiola	enrique.bojorquez-gaxiola@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Jessica	Bueno	Jmbueno.08@gmail.com	<input checked="" type="checkbox"/> In Attendance
Jeff	Caslake	jeff@biketempe.org	<input checked="" type="checkbox"/> In Attendance
Eric	Cook	eric.cook@maricopa.gov	<input checked="" type="checkbox"/> In Attendance
Rene	Corella	recorport@gmail.com	<input checked="" type="checkbox"/> In Attendance
Fernando	Felix	fernando.felix@phoenix.gov	<input type="checkbox"/> In Attendance
Aldo	Gonzalez	aldowaldo05@gmail.com	<input checked="" type="checkbox"/> In Attendance
Sam	Gomez	sam@thesagrado.org	<input checked="" type="checkbox"/> In Attendance
Barbara	Grygutis	barbara@barbaragrygutis.com	<input checked="" type="checkbox"/> In Attendance
Samantha	Hacker	samantha.hacker@phoenix.gov	<input type="checkbox"/> In Attendance
Nick	Hammond	nick@nickhammond.com	<input checked="" type="checkbox"/> In Attendance
Eric	Johnson	eric.johnson@phoenix.gov	<input type="checkbox"/> In Attendance
Skitch	Kitchen	skitch.kitchen@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Chris	Milner	christopher.milner@tylin.com	<input checked="" type="checkbox"/> In Attendance
Tariq	Momika	tariq.momika@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Heather	Murphy	heather.murphy@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Danny	RJ	Daniel.roperjones@audubon.org	<input checked="" type="checkbox"/> In Attendance
Jarod	Rogers	jarod.rogers@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Brandy	Ruark	brandy.ruark@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Erika	Rubio	erubio@dtphx.org	<input checked="" type="checkbox"/> In Attendance
Hunter	Ruthrauff	hunter.ruthrauff@tylin.com	<input checked="" type="checkbox"/> In Attendance
Bobby	Sokolowski	bobby.sokolowski@tylin.com	<input checked="" type="checkbox"/> In Attendance
Kelie	Thomas	kelie.thomas@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Kelie	Thomas	kelie.thomas@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Jamie	Trufin	Jamie@phoenixspokespeople.org	<input checked="" type="checkbox"/> In Attendance
Mojgan	Vahabzadeh	mojgan.vahabzadeh@phoenix.gov	<input checked="" type="checkbox"/> In Attendance
Jose	Vaquera	jose.vaquera@friendlyhouse.org	<input type="checkbox"/> In Attendance
Ryan	Wozniak	ryan.wozniak@tylin.com	<input checked="" type="checkbox"/> In Attendance
Jeff	Rentz	jeffrentz@j2design.us	X
Nancy	Thomas	nancy.thomas@phoenix.gov	X
Marisa	Novacek	mnovacek@j2design.us	X



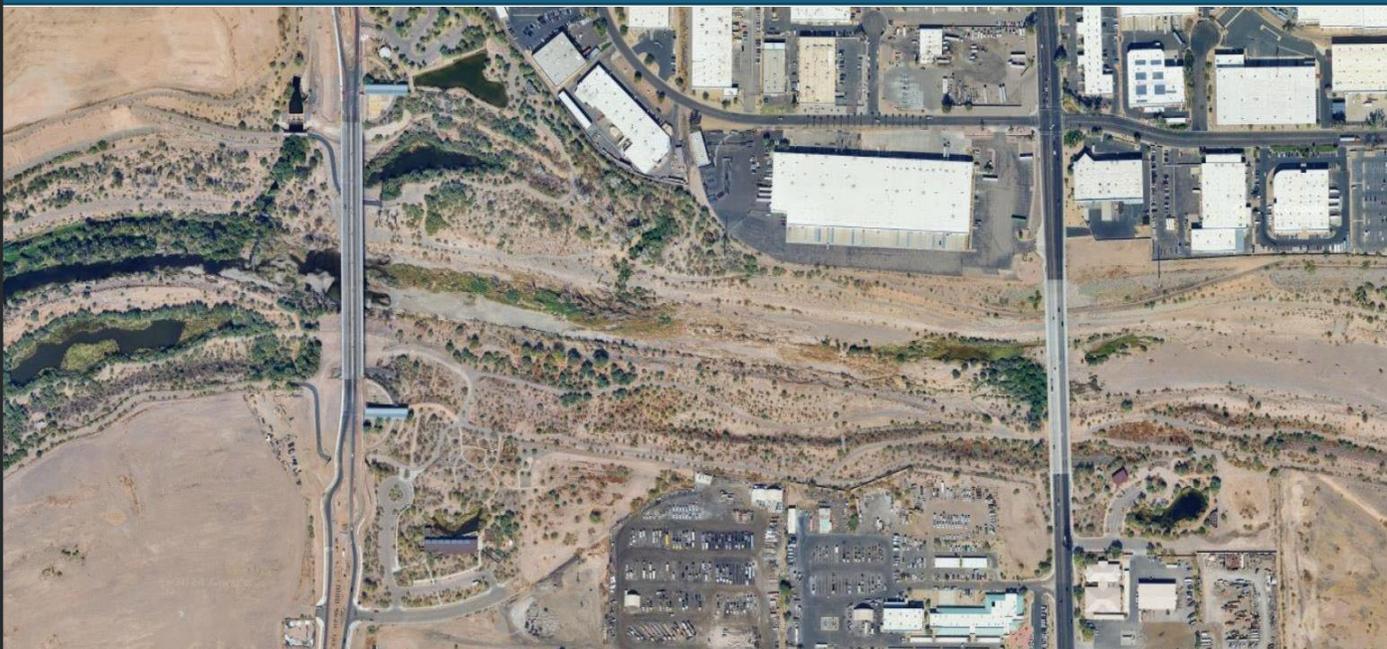


3rd Street Rio Reimagined

Rio Salado Bike & Pedestrian Bridge Pathway

PUBLIC INFORMATION AND OUTREACH

Meeting and Survey Summary - July 2024



Public Information and Outreach Summary

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Public Information and Outreach Summary

Background

In July 2024, the City of Phoenix Street Transportation Department held an in-person public meeting to present the community with three pre-design alternatives and three artwork concepts for the city's first and only dedicated bicycle and pedestrian bridge across the Rio Salado. This outreach period started with a public meeting on July 9th and lasted until the online survey closed on Sunday, July 28, 2024.

The survey information was made available through the following methods:

- Physical handouts during public meeting
- Visit phoenix.gov/streets/riosaladobridge
 - Fill out a survey
- Email at agranillo@barnhartco.com
- Project hotline at 623-825-3444

Public Notification Methods

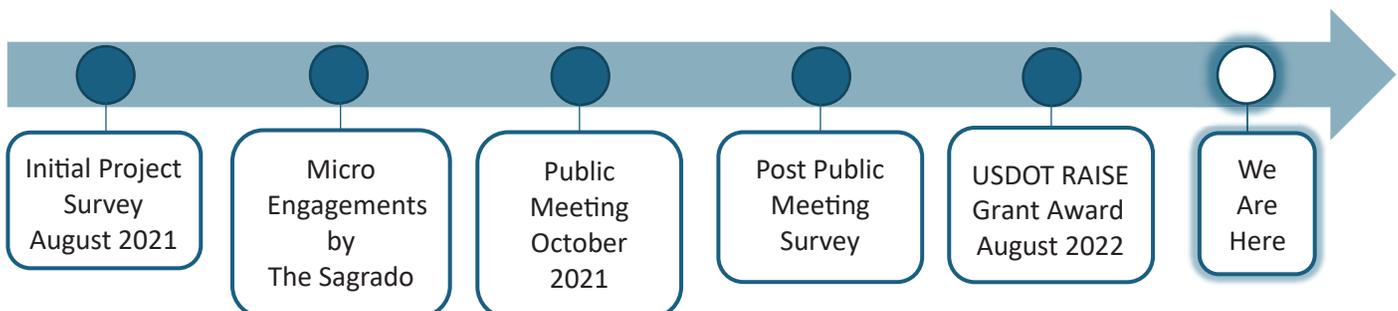
Notifications for the public meeting included:

- 8,500 postcards were delivered to all residents, including multi-family units, and businesses within a half-mile radius of the study area.
- 8 Static notification signs were posted along the study area from June 25th to July 10th.
- Email notifications to 88 neighborhood organizations, community leaders, and stakeholders near the project area.
- Council district office notification for inclusion in newsletters/platforms.
- Information shared with other city departments including the assigned neighborhood specialist and corresponding village planner and village planning committee.
- Posted to all neighborhoods within a .5-mile radius on Nextdoor.

Public Meeting

On July 9th, the City of Phoenix Street Transportation Department and the study team held an in-person public meeting in the Nina Mason Pulliam Room of the Burton Barr Central Library. The meeting was held from 5PM - 6:30PM, where the team provided an overview of the study and presented the initial pre-design alternatives and artwork concepts. Upon entering the meeting, guests were asked to sign in and were presented with a survey form and ushered into the meeting room. The meeting was attended by 50 community members including Councilmember Carlos Galindo-Elvira from District 7 and a representative for Councilmember Kesha Hodge Washington from District 8.

The presentation kicked off with a welcome from the City of Phoenix Street Transportation Director, Joseph Brown followed by the Project Manager Tariq Momika (City of Phoenix) who provided an overview of the project goals, scope, and limits. Chris Milner (TYLin) went over the project history and past outreach efforts.

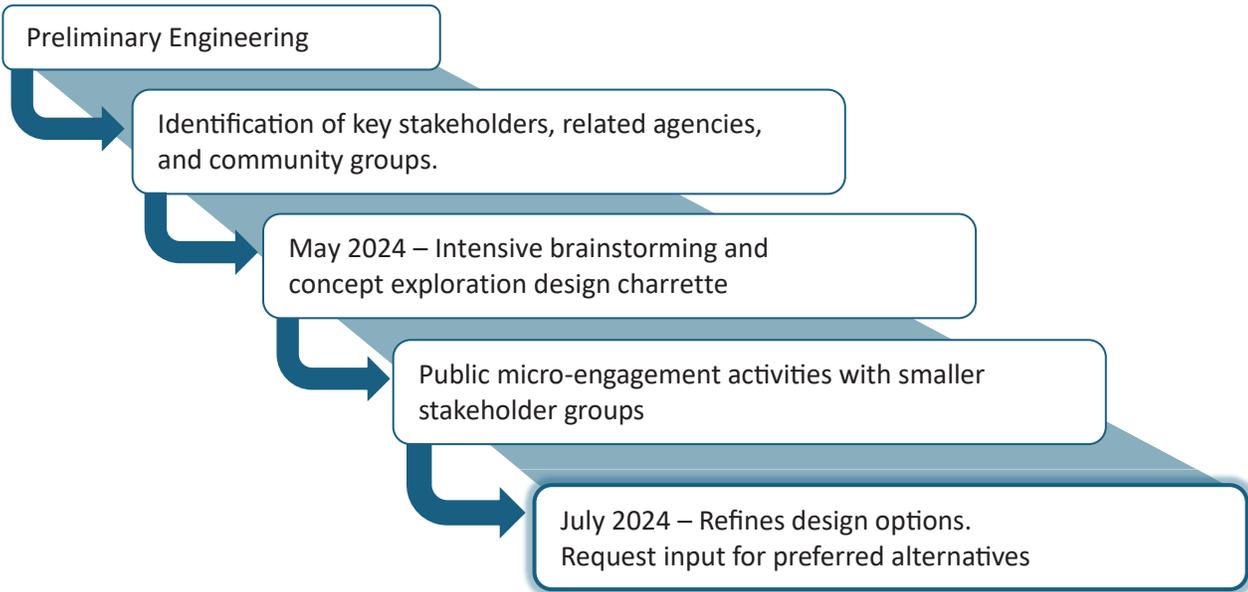


During the predesign study, a preferred alternative “Basket Handle Arch” was developed. This alternative pays homage to the native people that inhabited the Salt River area this area and also reflects the natural environment.

3rd Street Rio Reimagined - Rio Salado Bike & Pedestrian Bridge Pathway

Public Information and Outreach Summary

Current Design Phase Development

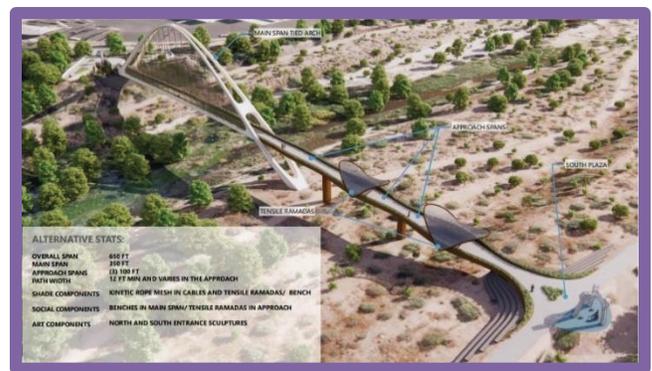


Following the design phase development, Hunter Ruthrauff (TYLin) took over the presentation to present the three alternatives that have been developed from the original Basket Handle Arch Alternative.

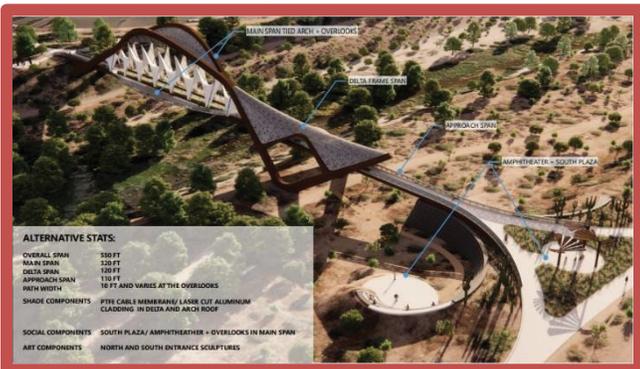
Alternative 1 – Spring



Alternative 3 – Union



Alternative 2 – Convergence



3rd Street Rio Reimagined - Rio Salado Bike & Pedestrian Bridge Pathway

Public Information and Outreach Summary

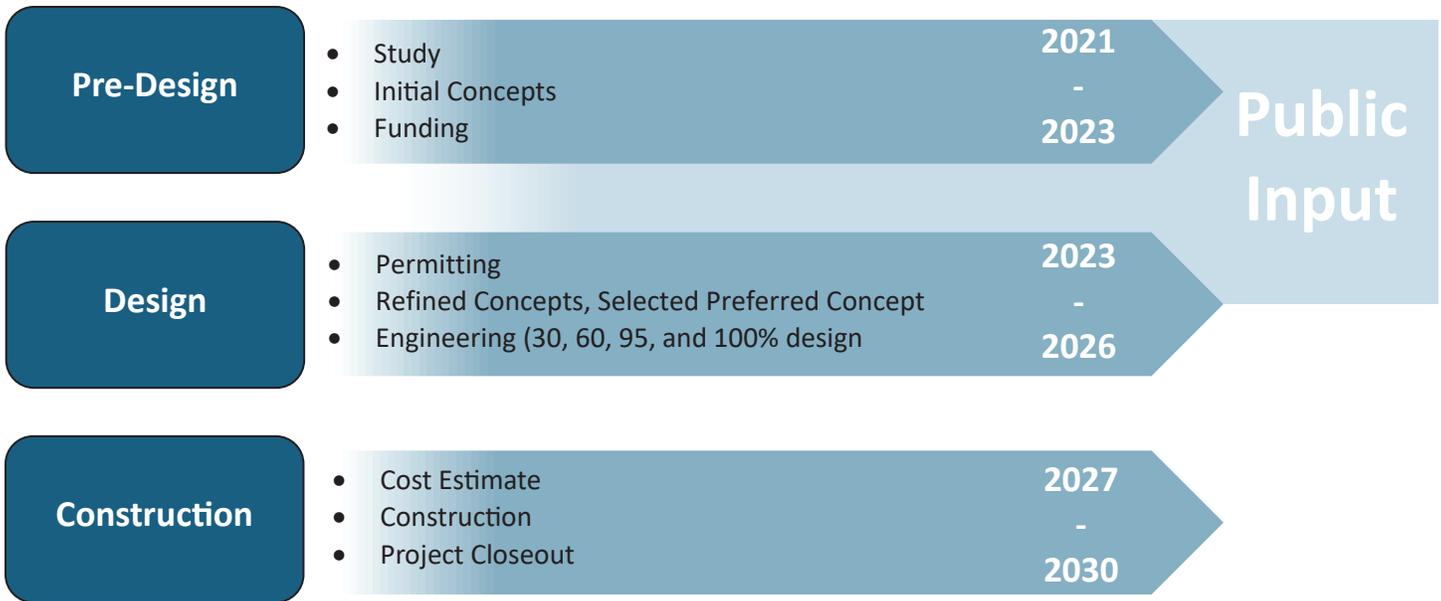
The team is also proposing improvements along the south bank of the Rio Salado spanning from Central Avenue to the east side of 40th Street. The amenities for this area include trail lighting, seating and ramadas.

Barbara Grygutis (Independent Artist) followed Hunter with a preview of the three art concepts and went into details about the inspirations and design of each concept.



The presentation portion of the meeting concluded with Heather Murphy (City of Phoenix) who provided an overview of the project schedule and encouraged attendees to visit the exhibit stations immediately outside the presentation room.

Project Schedule:



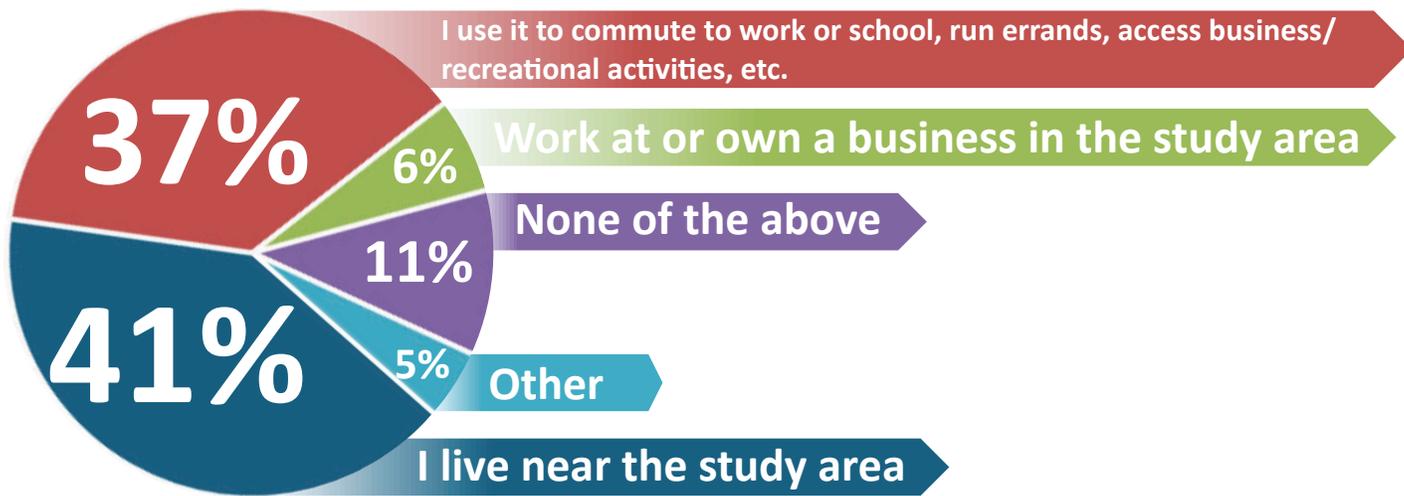
Attendees spent about 20 to 25 minutes following the meeting speaking with the design team and looking at the bridge alternatives and art concept renderings.

Public Information and Outreach Summary

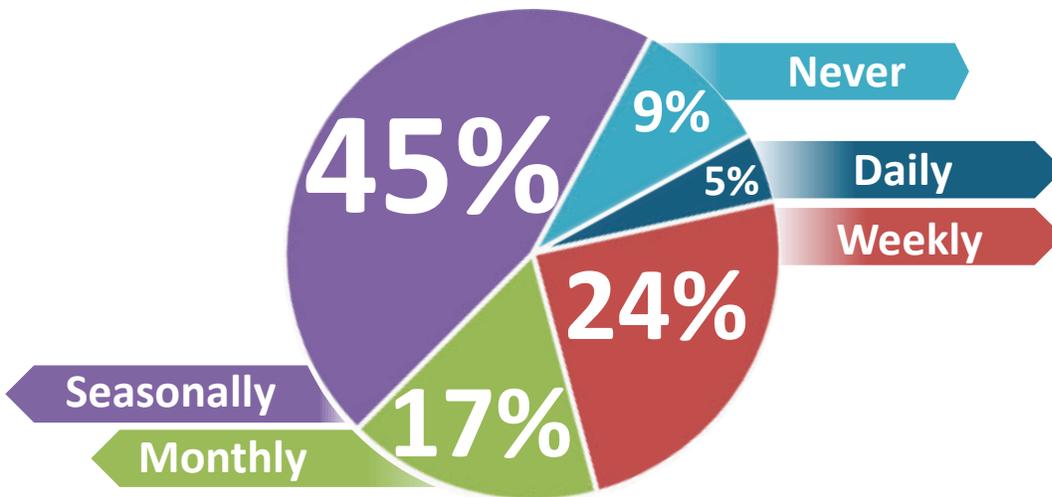
Survey Summary

The project team received 183 survey responses via the survey link.

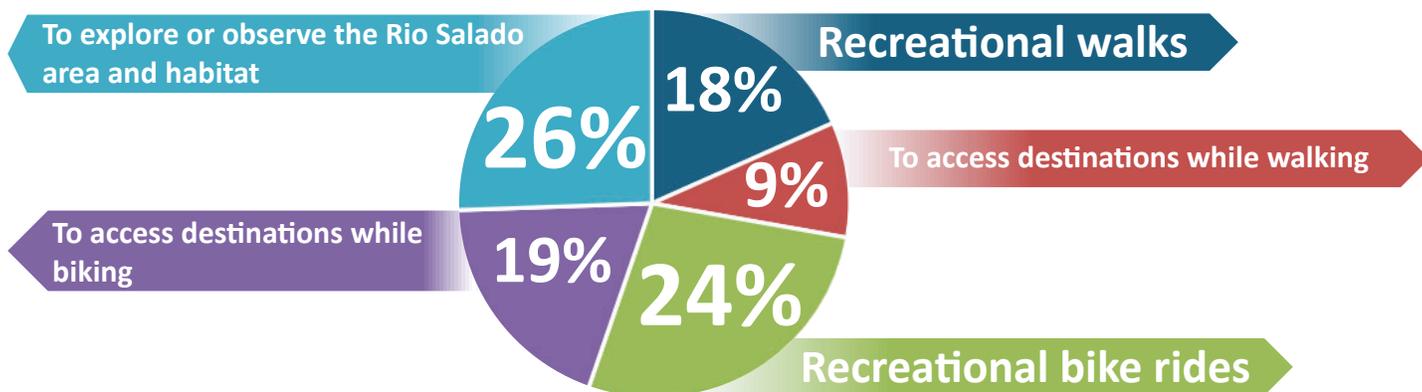
How do you currently relate to the project area?



How often do you walk or bike near the Rio Salado?



As the city progresses with the improvement of the 3rd Street connector between the 3rd Street Bridge and Lincoln Street to provide a pathway and bicycle lane, how do you plan to use the bridge to travel to the downtown area once it is complete? (select all that apply)



3rd Street Rio Reimagined - Rio Salado Bike & Pedestrian Bridge Pathway

Public Information and Outreach Summary

Once the bridge is complete, how often do you plan to use the **bicycle/pedestrian bridge**?

Once the bridge is complete, how often do you plan to use the **paths** along the Rio Salado?



- 37% Seasonally
- 30% Weekly
- 24% Monthly
- 6% Daily
- 3% Never



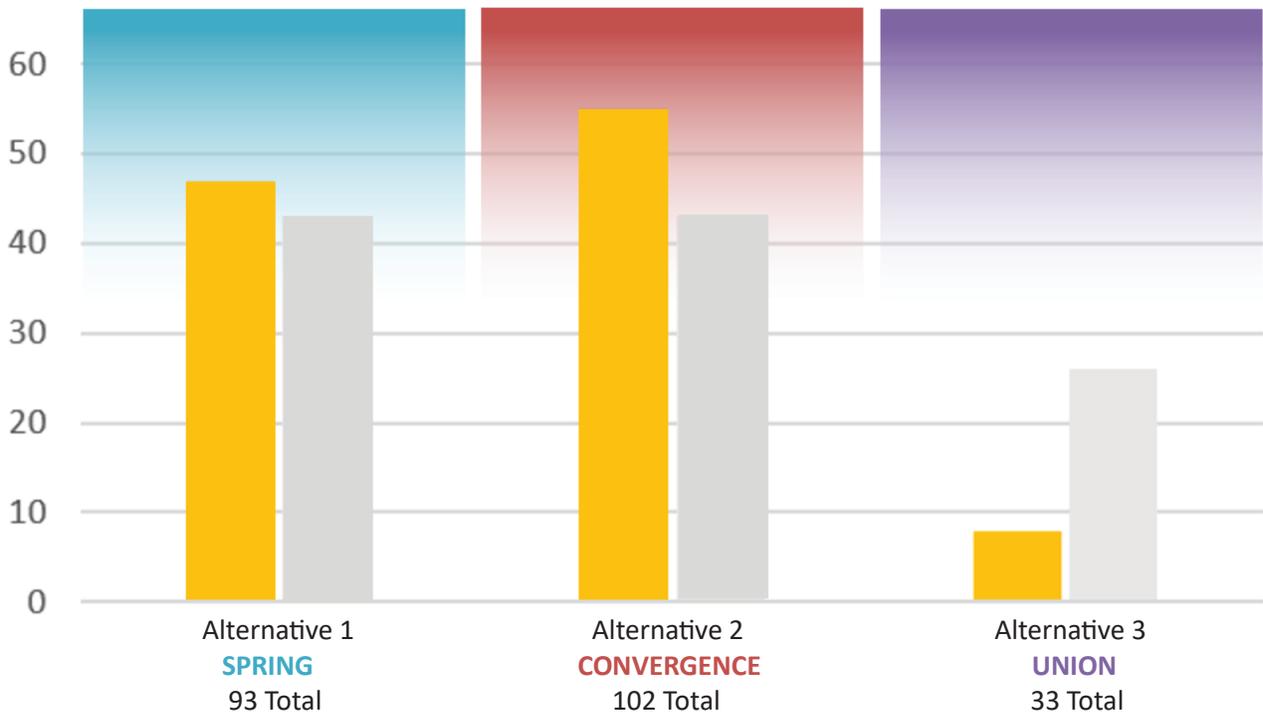
- 39% Seasonally
- 34% Weekly
- 2% Monthly
- 5% Daily
- 2% Never

Rate your satisfaction with Alternative 1 SPRING				
Very Satisfied	Satisfied	Neither Satisfied or Unsatisfied	Unsatisfied	Very unsatisfied
39%	35%	17%	6%	3%

Rate your satisfaction with Alternative 2 CONVERGENCE				
Very Satisfied	Satisfied	Neither Satisfied or Unsatisfied	Unsatisfied	Very unsatisfied
52%	27%	12%	7%	2%

Rate your satisfaction with Alternative 2 UNION				
Very Satisfied	Satisfied	Neither Satisfied or Unsatisfied	Unsatisfied	Very unsatisfied
12%	30%	30%	17%	11%

Having viewed all the alternatives, please select your **most preferred (GOLD)** and your **second most preferred (SILVER)** alternative.



Public Information and Outreach Summary

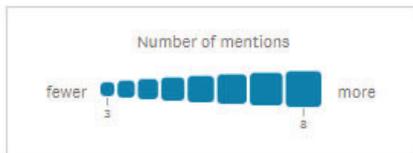
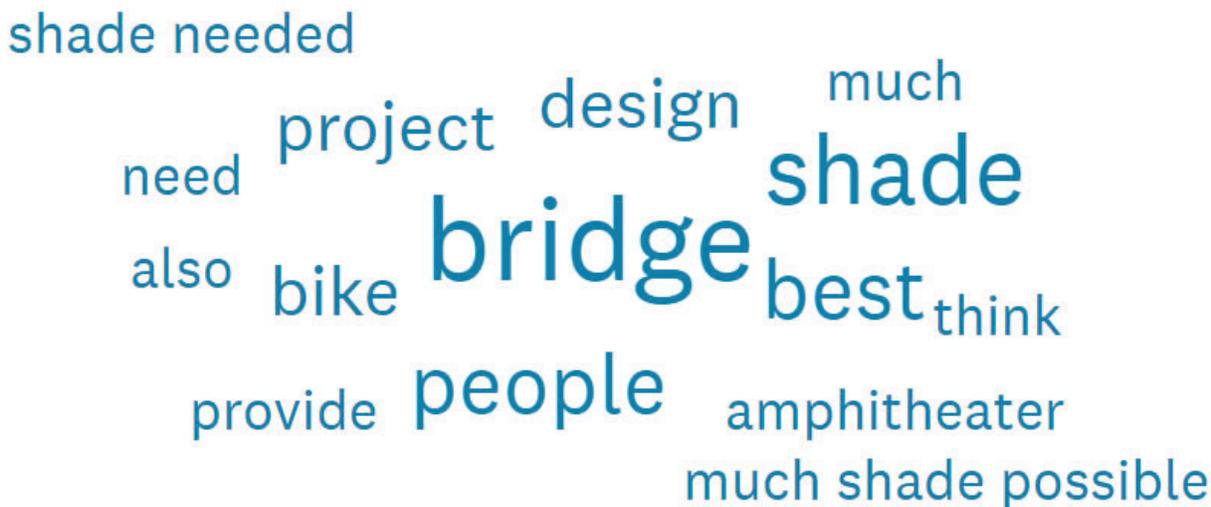
Where is the highest priority for providing shade?

- 71% The main span over the wetlands
- 12% The approach structures
- 17% In the landscape near entrances

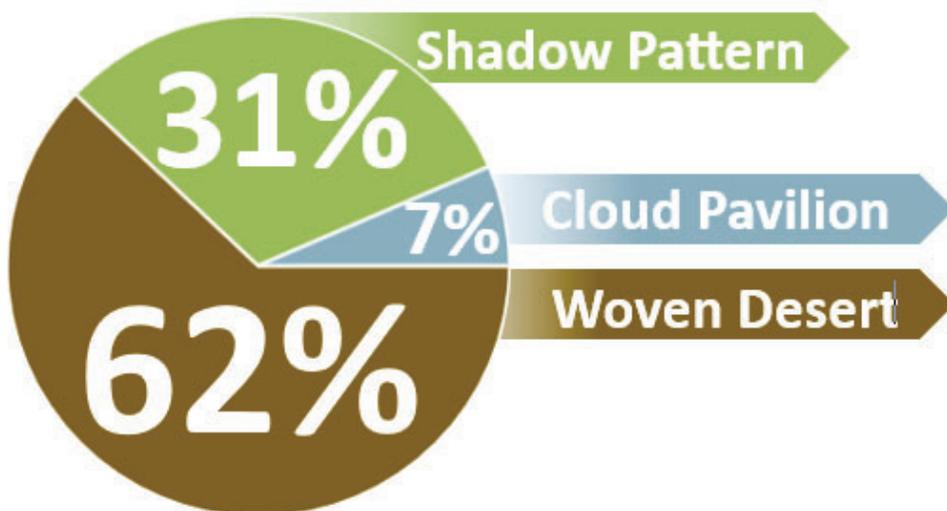
Where in this project is the priority for socialization and programming?

- 60% In the landscape near the entrances (with art sculptures)
- 29% The approach structures leading to the span
- 11% The main span over the wetlands

Do you have any comments on the proposed alternatives? *Below is a word cloud from the comments received. All the comments have been organized via theme and are listed verbatim in the appendix.*



Which artwork concept do you prefer?



Public Information and Outreach Summary

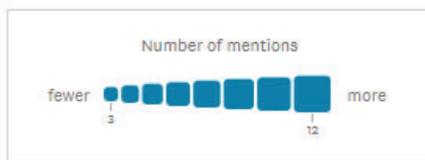
Which material used for the sculptures do you prefer?

- 65% Rusted steel
- 18% Painted steel
- 17% Aluminum

Would you like to see a specific artwork paired with a specific bridge?

	Woven Desert	Shadow Pattern	Cloud Pavilion
Alternative 1 SPRING	68%	25%	7%
Alternative 2 CONVERGANCE	53%	40%	7%
Alternative 3 UNION	41%	27%	32%

Do you have any comments on the proposed artistic elements? *A summary of the comments received is written below. All comments have been organized via theme and are listed in the appendix.*



Public Information and Outreach Summary

Appendix – Bridge Comments

Do you have any comments on the proposed alternatives? *All comments have been organized via theme and are listed verbatim.*

Theme	Comment
Amphitheater	Provide north arrow or direction of view. Plenty of shade from western exposure. Hopefully amphitheaters have plenty of accessibility.
	The amphitheater and plaza are great!
	We do not need amphitheaters near the entrances. This slows bikes down and causes pedestrians to congregate. This is already a HUGE issue on Tempe Town Lake. Make sure any areas meant for gathering are away from entrances.
Concerned about homeless camps and safety	As much as I appreciate shade, I fear that too much of it may turn this bridge into a campground. I hope that regardless of the design chosen, this bridge is well patrolled.
	Get in a vehicle and quit making decisions from an office setting and see exactly how embedded the unhoused are in the river. You people think this is good but people literally get killed at night after the river closes if Donald and Jarod have coverage
	Must provide for full patrol by law enforcement. Needs to minimize attraction to homeless and vandalism.
	My biggest concerns are to eliminate non-natural lighting for the habitat below, and to ensure there's enough funding to provide more park rangers to protect the bottom to prevent "camps" to establish under them. And if that's not possible then Phoenix police presence patrolling the area is necessary.
	No camping on or near bridge
Alternative 1: Spring	Alternative 1 addresses shade and is the best suitable to the beauty of the desert.
	I love the amphitheater in the Spring version. I think the Spring version is by far the best one.
Alternative 2: Convergence	Convergence has the widest path and the longest stretch of shade it seems. Spring seems too dark. If you could work in the kinetic squares that's move with the wind into the convergence design, I think that would be amazing. I like the sail but replace the steel canopies roofs with squares, I also love the amphitheater idea.
	I like the open air feeling of the second alternative. I worry that the netting which would provide shade in alternatives 1 and 3 would feel too suffocating.
Alternative 3: Union	Scheme 3 is the most appealing
Culture	Please acknowledge Native American culture accordingly.
Design in general	It's important to tone down the designs, keep satisfactory elements based on survey results but choose a subtle integration that blends more into existing habitat (similar to the original basket handle concept plus added shade) rather than contrasting/competing with iconic architecture - incorporate native cultures narrative
	Watching the presentation and reviewing the proposed alternatives, it also seems like the project managers are looking to add nice pictures to their LinkedIn or portfolio rather than build a bridge that people want to use. I get that the project received a major \$25 million federal grant, so we might as well use it all. I'm out in this heat and so are many, many other people in this neighborhood. We would appreciate it if the focus were on building a well-shaded structure that is comfortable to walk/bike on even in the middle of summer and not on having the most thought-provoking, culturally-rich design for whatever award contest. I have a limited understanding of how much the aesthetic design of a structure like this impacts its cost, admittedly. Though it's unfortunate to see so much money poured into one project when nearly all of downtown doesn't have separated bike lanes.

Public Information and Outreach Summary

Funding	I wish these funds would be allocated towards infrastructure that is needed to better control traffic. Such as crosswalks, traffic lights between long stretches of roadway such as Southern Avenue between Central to 7th St, to 16th street for example. This would help alleviate unnecessary vehicle and pedestrian accidents that sometimes lead to death.
Lighting	What does lighting look like at night?
Maintenance	If there's foliage in the bridge as a means for decoration, then ensure there's a following plan to maintain it. Often times we see very beautiful plans that die quickly because there isn't a plan in place to sustain the original concept.
	I am wondering what type of material would be easiest to maintain and best environmentally
Include more shade	Alt. 1 or 2 look great. Please provide more shade at the entrances.
	Arizona summers are very hot, shades are needed at the entrance and on the bridge.
	as much shade as possible! it is getting hotter every year.
	As much shade as possible, whether it be natural from more trees or manmade industrial/cooling fans/mist
	lots of trees and shade needed in summer months.
	Maximum shade is essential throughout the project scope.
	Shade should be provided using solar panels.
	Shade was the strongest consideration because of our brutal summers.
	The bridge should be a landmark and icon easily identifiable and connected to the River. It should also provide as much shade as possible across the entire span and on either end.
	There are some good ideas in each. But definitely lots of shade needed in each space. Not just main span. Seating as well.
	Adding more trees and more shade structures would be amazing.
Wasn't sure how the shade May or may not impact the wetlands area but if it doesn't then I like the idea of that being a gathering point.	
Path details	Having "walk/stand" and "bike lane" zones will help users understand how to behave. Too many multi use paths lack any clear direction and you end up with people standing blocking the whole path.
	Prioritize separation of bike and pedestrian areas
	Please define walking and cycle paths and consider development around the bridge.
Safety	How would safety be regulated under the bridge? Could the amphitheater space under the bridge create issues and attract people that are homeless.
Support	I love this project and I can't wait to ride my bike and enjoy it! Thank you
Water	Water fountains

Public Information and Outreach Summary

Appendix –Art Comments

Do you have any comments on the proposed artistic elements? *All comments have been organized via theme and are listed verbatim.*

Theme	Comment
Cloud pavilion	While I think Woven Desert is the prettiest aesthetically, Cloud Pavilion might be better for countering the heat. I think Shadow Pattern might be a bit impractical because of the heat unfortunately. In the end, aesthetics are important but practicality is even more so.
Combine all	Combine aspects of all three that maximize shade. Incorporate more vegetation into the artistic elements.
Concept: Shadow Pattern	Prefer Spring with shadow pattern in white painted steel or in aluminum Shadow pattern is best pattern
Concept: Woven desert	Woven Desert looks like it has the most shade
	Woven desert spoke most it's Arizona and it's environment.
	I like how the woven desert is centrally located on the south plaza as opposed to off to the side.
	I love how Woven Desert can incorporate shade into the design! I select woven, it seems this pattern provides more shade rather than lack of.
Culture	Allow for subtle modifications of surface designs/patterns in order to integrate 'native culture' elements that can accompany the artwork without competing with it
Educational	Incorporate more education or interaction
Functionality	Functional
Location	From the renderings, I'm concerned that the architect is not someone who goes outside and uses this kind of infrastructure. Have you ever sat down in the middle of the approach to a bridge? I have not. Why are there sculptures rendered to be there? People sit on the span or on the sides of the river, if anywhere, to take a break and look out over the river. I trust that the sculptor is very talented aesthetically but the function of the structures needs to be considered too.
Include more shade	The more shade the better. Form should follow function.
	Incorporate more shade
	provide much shade
	Only one of the options provides shade AND seating. Shade should be the #1 priority, followed by somewhere to sit and rest to enjoy the shade.
	Please favor shade or artistic design
	Better architectural shading, this is Arizona.
	Maximum shade is essential for this project to succeed.
Provide as much shade as possible, we need functionality more than anything.	
Nature	Keep it as natural looking as possible and honor the indigenous that helped provide the Rio in the first place.
	Keep it as natural looking as possible and honor the indigenous that helped provide the Rio in the first place.
Rusted metal	Use rusted metal elements to match the design utilized at PHX Mountain Parks.
Seating	More benches/seating that are in theme, maybe even tables. For recreational bikers, I see this as becoming a natural U-turn point for them and head back home.
Support	This looks amazing and will help create functional and pleasing recreation area
Vandalism	Due to the remote location and relative lack of traffic, I would be concerned for large expenditures for the sake of art made eyesore due to vandalism.
Water	Incorporate more water collection



STREET TRANSPORTATION DEPARTMENT

PUBLIC MEETING NOTICE

**3rd Street Rio Reimagined
Bike and Pedestrian Bridge**

Date: Tuesday, July 9, 2024, at 5 p.m.

Location: Burton Barr Central Library
Nina Mason Pulliam Room
1221 N. Central Avenue

The City of Phoenix Street Transportation Department will be having an in person public meeting to provide an update and gather input on the 3rd Street Rio Reimagined Bike and Pedestrian Bridge.

This bridge will provide a seamless, safe, and comfortable connection across the Rio Salado for residents walking and biking.

AVISO DE REUNIÓN PÚBLICA

**3rd Street Rio Reimaginado
Puente para bici y peatones**

Fecha: martes 9 de julio de 2024, a las 5 p.m.

Ubicación: Burton Barr Central Library
Nina Mason Pulliam Room
1221 N. Central Avenue

El Departamento de Calles y Transportación de la Ciudad de Phoenix tendrá una reunión pública en persona para proporcionar una actualización y recopilar comentarios sobre el puente para bici y peatones del Río Reimaginado en 3rd Street.

Este puente ofrecerá una conexión ininterrumpida, segura y cómoda sobre el Río salado para los residentes que se trasladan a pie o en bicicleta.

PROJECT HOTLINE / LÍNEA DEL PROYECTO: 623-825-3444
PHOENIX.GOV/STREETS/RIOSALADOBRIDGE

This notice can be made available in an alternate format upon request by calling 602-262-6284 (TTY: Use 711).
Este aviso está disponible disponible en un formato alternativo a petición llamando al 602-262-6284 (TTY: Use 711).

3rd Street Rio Reimagined - Rio Salado Bike & Pedestrian Bridge Pathway

Public Information and Outreach Summary

Appendix – Digital Outreach

Email blast

- June 24, 2024 – Public Meeting Announcement
- July 8, 2024 – Public Meeting Reminder
- July 9, 2024 – Post Meeting Survey
- July 16, 2024 – Post Meeting Survey Reminder
- July 24, 2024 – Final Survey Reminder

City of Phoenix

- July 8, 2024 – Public Meeting Announcement
- July 11, 2024 – Meeting Post
- July 22, 2024 – Survey Post
- July 26, 2024 – Spanish Survey Reminder Post

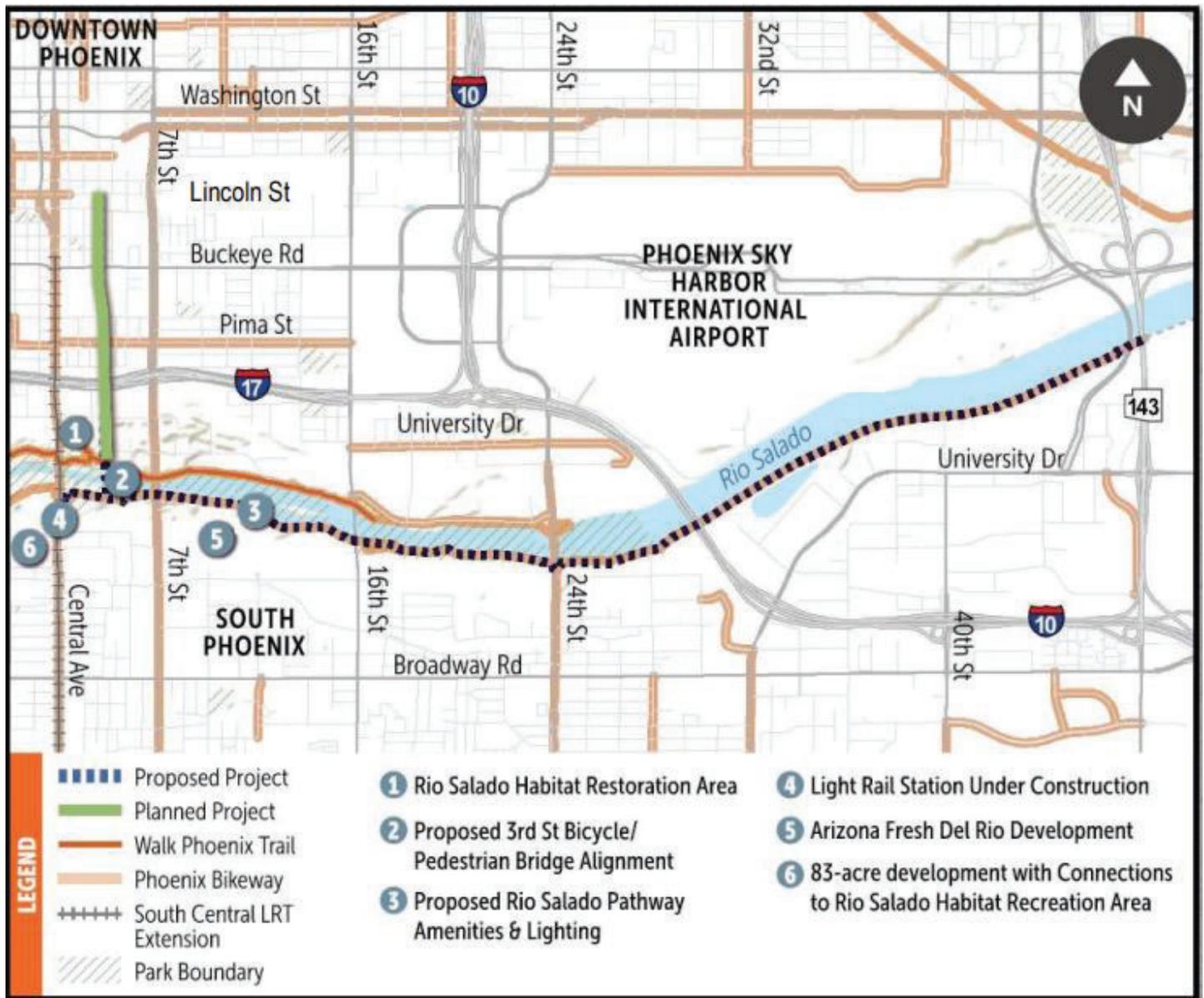
The Sagrado

- July 15, 2024 – Project Post
- Multiple social media story post



Public Information and Outreach Summary

Appendix – Project Boundaries



Public Information and Outreach Summary

Appendix – Survey



**Rio Reimagined: 3rd Street Rio Salado
Bicycle / Pedestrian Bridge – Survey**

The purpose of this survey is to get community input on the proposed bicycle and pedestrian bridge over the Rio Salado and the pathway improvements to the southern bank of the Rio Salado. You will have the option to give us your contact information in order to get more information about the project. No identifying information will be shared in the survey report.

How do you relate to the project area? *(select all that apply)*

- I live near the project area
- I use this area to commute to work or school, run errands, access business/recreational activities, etc.
- I work or own a business in the project area
- Other: _____

How often do you walk or bike near the Rio Salado?

- Daily
- Weekly
- Monthly
- Seasonally
- Never

As the city progresses with the improvement of the 3rd Street connector between the 3rd Street Bridge and Lincoln Street to provide a pathway and bicycle lane, how do you plan to use the bridge to travel to the downtown area once it is complete? *(select all that apply)*

- Recreational walks
- To access destinations while walking
- Recreational bike rides
- To access destinations while biking
- To explore or observe the Rio Salado area and habitat
- Other: _____

Once the bridge is completed, how often do you plan to use the bicycle/pedestrian bridge?

- Daily
- Weekly
- Monthly
- Seasonally
- Never

When the bridge is completed, how often do you expect to use the paths along the Rio Salado?

- Daily
- Weekly
- Monthly
- Seasonally
- Never

Rate your satisfaction with Alternative 1:

- Very Satisfied
- Satisfied
- Neither Satisfied or Unsatisfied
- Unsatisfied
- Very Unsatisfied

Rate your satisfaction with Alternative 2:

- Very Satisfied
- Satisfied
- Neither Satisfied or Unsatisfied
- Unsatisfied
- Very Unsatisfied

Rate your satisfaction with Alternative 3:

- Very Satisfied
- Satisfied
- Neither Satisfied or Unsatisfied
- Unsatisfied
- Very Unsatisfied

Having viewed all the alternatives, please select your **most preferred alternative**:

- Alternative 1: Spring
- Alternative 2: Convergence
- Alternative 3: Union

Having viewed all the alternatives, please select your **second most preferred alternative**:

- Alternative 1: Spring
- Alternative 2: Convergence
- Alternative 3: Union

Where is the highest priority for providing shade? *(consider where your time is best spent)*

- The main span over the wetlands
- The approach structures
- In the landscape near the entrances.

Where in this project is the priority for socialization and programming?

- The main span over the wetlands
- The approach structures leading to the span
- In the landscape near the entrances (with art sculptures)

Public Information and Outreach Summary

Is it important to define spaces for walking, biking, and viewing?

- Yes, if path width allows
- Yes, a wide path with separated users is very important
- No, users will regulate their own conduct

Do you have any comments on the proposed alternatives? _____

Which artwork concept do you prefer?

- Woven Desert
- Shadow Pattern
- Cloud Pavilion

Which material used for the sculptures do you prefer?

- Rusted steel
- Painted steel
- Aluminum

Would you like to see a specific artwork paired with a specific bridge alternative? *Place an X on your preferred combinations*

	Woven Desert	Shadow Pattern	Cloud Pavilion
Alternative 1: Spring			
Alternative 2: Convergence			
Alternative 3: Union			

Do you have any comments on the proposed artistic elements? _____

How did you learn about this input opportunity?

- Social media (*X, Nextdoor, Facebook, etc.*)
- Project website
- Signs in the area
- Postcard
- Neighbor, friend, etc.
- Other: _____

Name: _____ Email: _____

All comments must be received by 11:59 p.m. on July 28, 2024
Take the survey online: www.surveymonkey.com/r/RioReimagined
Email your survey form to: agranillo@barnhartco.com
Call our project hotline: 623-825-3444
Visit our project website: phoenix.gov/streets/RioSaladoBridge



Rio Reimagined: 3rd Street Rio Salado Bicycle / Pedestrian Bridge – Encuesta

El propósito de esta encuesta es obtener la opinión de la comunidad sobre la propuesta del puente para bicicletas y peatones de 3rd Street/Río Salado y sus mejoras al camino en la orilla sur del río. Tendrá la opción de proporcionarnos su datos de contacto para obtener más información sobre el proyecto. Sus respuestas a la encuesta permanecerán anónimas.

¿Cuál es su relación con la zona donde se llevará a cabo el proyecto? (Seleccione todas las que correspondan)

- Vivo cerca del área del proyecto
- Utilizo esta calle para ir al trabajo o a la escuela, hacer quehaceres, visitar negocios, actividades recreativas, etc.
- Trabajo o soy dueño de un negocio en el área del proyecto
- Otro: _____

¿Qué tan seguido camina o anda en bicicleta cerca del Río Salado?

- Diario
- Semanal
- Mensual
- Por temporadas
- Nunca

A medida que la ciudad avanza en las mejoras del trayecto sobre 3rd Street para proporcionar una vía y un carril de bicicletas entre el sitio del puente y su conexión a Lincoln Street, ¿cómo planea usar el puente para viajar al centro una vez que haya sido construido? (Seleccione todas las que correspondan)

- Caminatas recreativas
- Paseos recreativos en bicicleta
- Para explorar u observar el área y el hábitat del Río Salado
- Otro: _____
- Para visitar lugares mientras camino
- Para visitar lugares en bicicleta

Una vez completado, ¿con qué frecuencia planea usar el puente para bicicletas / peatones?

- Diario
- Semanal
- Mensual
- Por temporadas
- Nunca

Una vez que completado el puente, ¿con qué frecuencia esperas utilizar los senderos a lo largo del Río Salado?

- Diario
- Semanal
- Mensual
- Por temporadas
- Nunca

Califique su satisfacción con la alternativa 1:

- Muy satisfecho
- Satisfecho
- Ni satisfecho ni insatisfecho
- Insatisfecho
- Muy insatisfecho

Califique su satisfacción con la alternativa 2:

- Muy satisfecho
- Satisfecho
- Ni satisfecho ni insatisfecho
- Insatisfecho
- Muy insatisfecho

Califique su satisfacción con la alternativa 3:

- Muy satisfecho
- Satisfecho
- Ni satisfecho ni insatisfecho
- Insatisfecho
- Muy insatisfecho

Después de ver visto todas las alternativas, seleccione su alternativa preferida:

- Alternativa 1: Primavera
- Alternativa 2: Convergencia
- Alternativa 3: Unión

Después de ver visto todas las alternativas, seleccione su segunda alternativa preferida:

- Alternativa 1: Primavera
- Alternativa 2: Convergencia
- Alternativa 3: Unión

¿En qué zona es más importante proporcionar sombra? (considere dónde pasará más tiempo)

- El tramo principal sobre los humedales
- Las estructuras de acercamiento
- En el paisaje cerca de las entradas

¿En qué parte de este proyecto está la prioridad para la socialización y la programación?

- El tramo principal del puente sobre el río
- Estructuras y vías de acceso al puente
- En las áreas naturales cerca de la entrada (donde se encuentran las esculturas)

Public Information and Outreach Summary

¿Considera importante definir espacios para caminar, andar en bicicleta y contemplar el paisaje?

- Sí, si el ancho del camino lo permite
- Sí, es muy importante tener un camino amplio con usos separados
- No, las personas regularán su propia conducta

¿Tienes algún comentario sobre las alternativas propuestas? _____

¿Qué concepto de obra de arte prefiere?

- Desierto tejido
- Patrón de sombra
- Pabellón de las nubes

¿Qué materiales utilizados para las esculturas prefiere?

- Acero oxidado
- Acero pintado
- Aluminio

¿Le gustaría ver una obra de arte en particular combinada con una de las alternativas específicas del puente? Coloque una X en sus combinaciones preferidas.

	Desierto tejido	Patrón de sombra	Pabellón de las nubes
Alternativa 1: Primavera			
Alternativa 2: Convergencia			
Alternativa 3: Unión			

¿Tiene algún comentario sobre los elementos artísticos propuestos? _____

¿Cómo te enteraste de esta oportunidad de aportación?

- Redes sociales (X, Nextdoor, Facebook, etc.)
- Sitio del proyecto
- Letreros en el vecindario
- Postal en el correo
- Vecino, Amigo, etc.
- Otro: _____

Nombre: _____ Correo Electrónico: _____

Todos los comentarios deben recibirse antes de las 11:59 p.m. del 28 de julio de 2024
Tome la encuesta en línea: www.surveymonkey.com/r/RioReimagined
Envíe su encuesta por correo electrónico a: agranillo@barnhartco.com
Llame a nuestra línea directa de proyecto: 623-825-3444
Visite sitio web de nuestro proyecto: phoenix.gov/streets/RioSaladoBridge

Rio Reimagined: 3rd Street Rio Salado Bicycle/Pedestrian Bridge



Public Meeting

July 9, 2024

Project Team

Joseph Brown Street Transportation Director

Rubben Lolly Deputy Street Transportation Director

Jarod Rogers Deputy Parks and Recreation Director

Carrie Brown Phoenix Arts & Culture Deputy Director

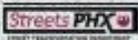
Tariq Momika Project Manager

Mojgan Vahabzadeh Senior Public Art Project Manager

Chris Milner TYLin Project Manager

Hunter Ruthrauff TYLin Bridge Architect

Barbara Grygutis Independent Artist



Welcome

**Street Transportation Director,
Joseph Brown**



Meeting Agenda

- Project Goals and Objectives
- Project Scope and Limits
- Background, History and Current
- Concepts Overview
- Art Integration Overview
- Project Schedule
- Next Steps - Refined Design Options



Project Goals and Objectives



Connecting Communities



Restoring and Revitalizing Healthy Rivers



Developing Economic Sustainability

Project Goals and Objectives

Local Connections

Connecting Communities



More than 1 in 5 households in the project area have no access to a personal automobile, emphasizing the need for safe, convenient, and direct active transportation infrastructure.



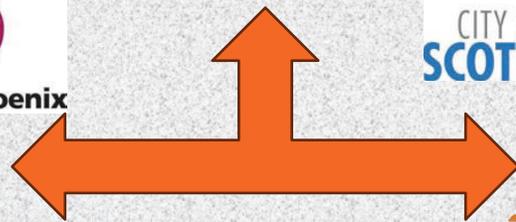
Project Goals and Objectives

Regional Connections

Connecting Communities



- Non-motorized link resulting in over 13 miles of low-stress pathways along the Rio Salado
- 20 miles of pathway with no at-grade vehicular crossings with Indian Bend Wash



Project Goals and Objectives

Restoring and Revitalizing Healthy Rivers

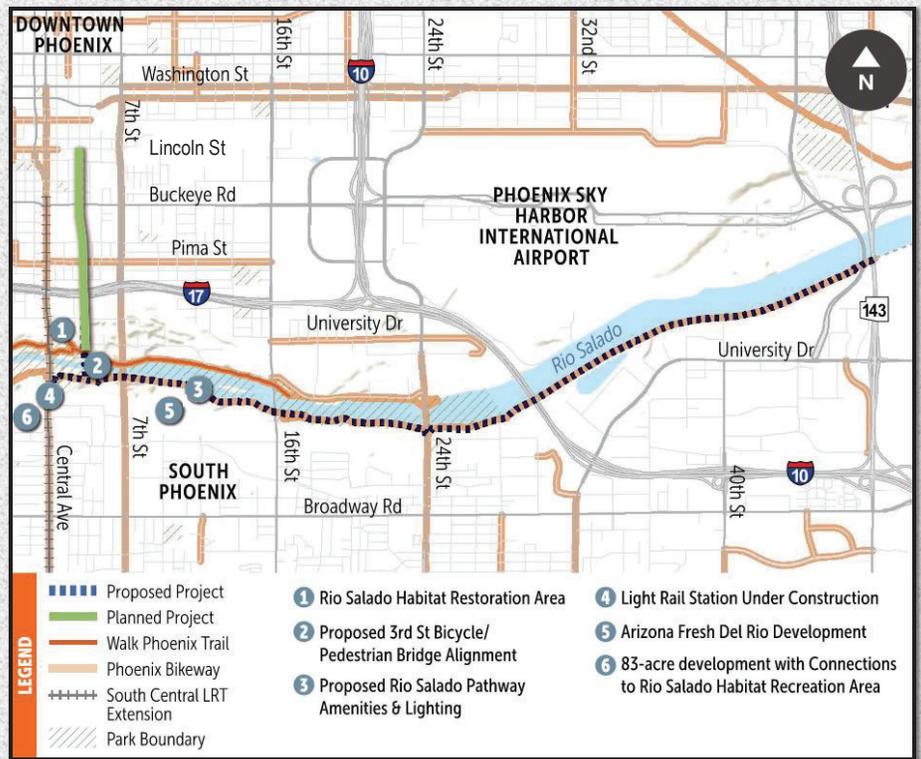


Developing Economic Sustainability



Project Scope and Limits

- Bicycle/Pedestrian Bridge along 3rd Street alignment and Rio Salado
- South Bank Pathway Amenities and Lighting

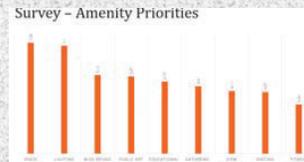


Background

Initial Project Survey
August 2021



October 2021 Public Meeting



USDOT RAISE Grant Award
August 2022



Micro Engagements by The Sagrado



Survey Following Public Meeting



PRE-DESIGN STUDY PREFERRED ALTERNATIVE



Current Design Phase Development

Preliminary Engineering

Identification of key stakeholders, related agencies, community groups

May 2024 Intensive brainstorming and concept exploration design charrette

Public micro-engagements activities with smaller stakeholder groups

July 9, 2024 - Refined design options
Request input for preferred alternative



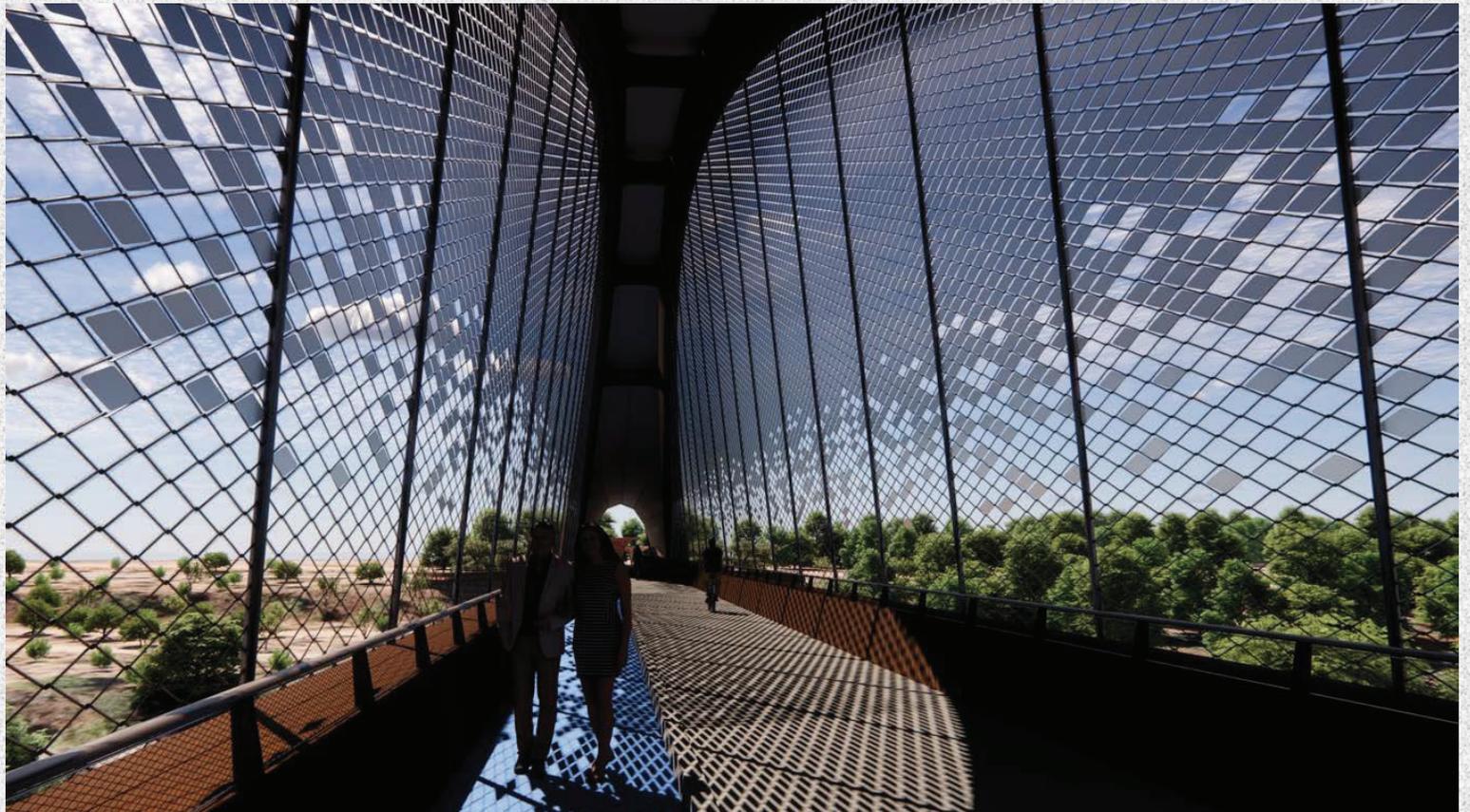
Bridge Concepts

- Alternative 1 – Spring
- Alternative 2 – Convergence
- Alternative 3 – Union

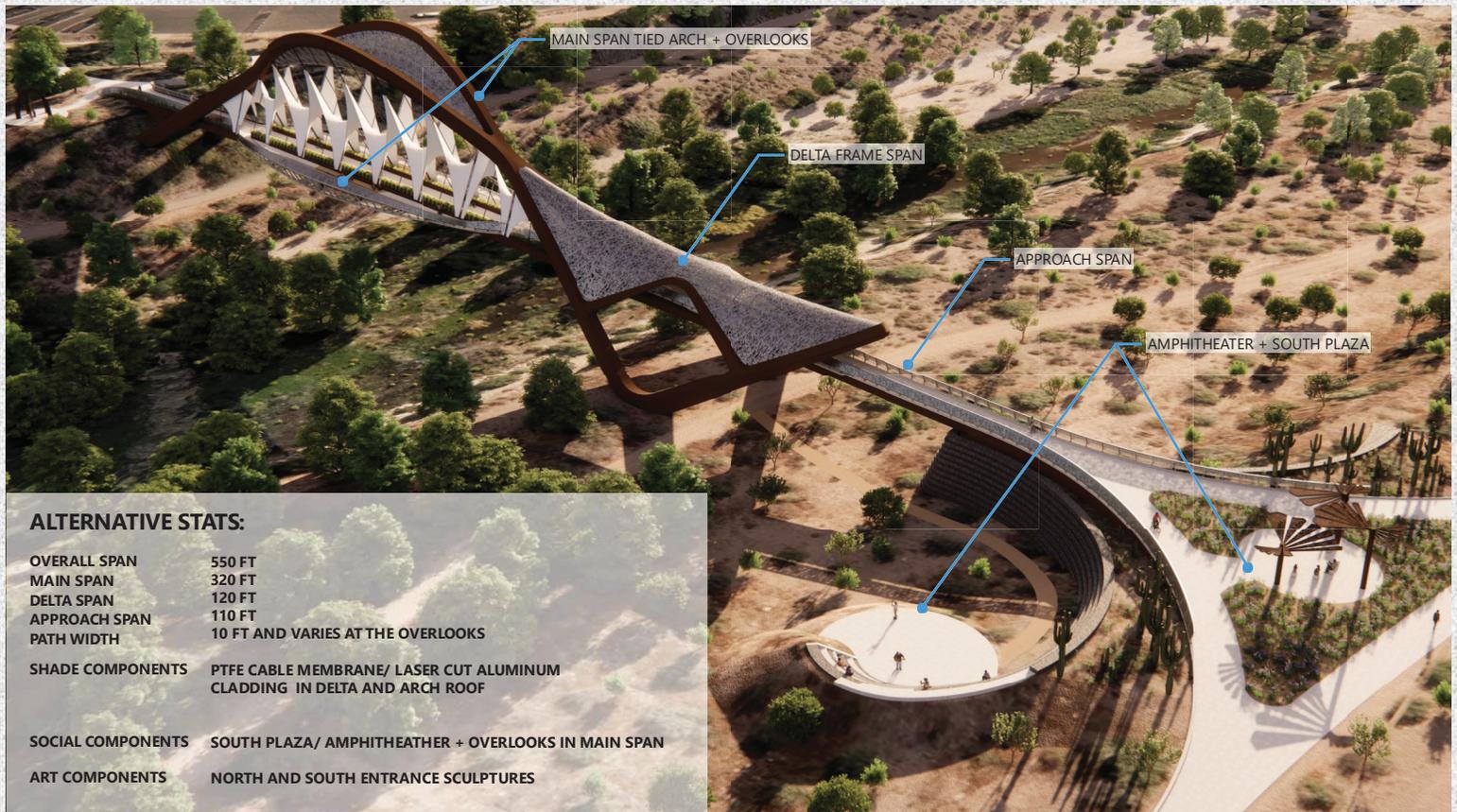


CONCEPTS RENDERINGS ALTERNATIVE 1 - SPRING





CONCEPTS RENDERINGS ALTERNATIVE 2 - CONVERGENCE

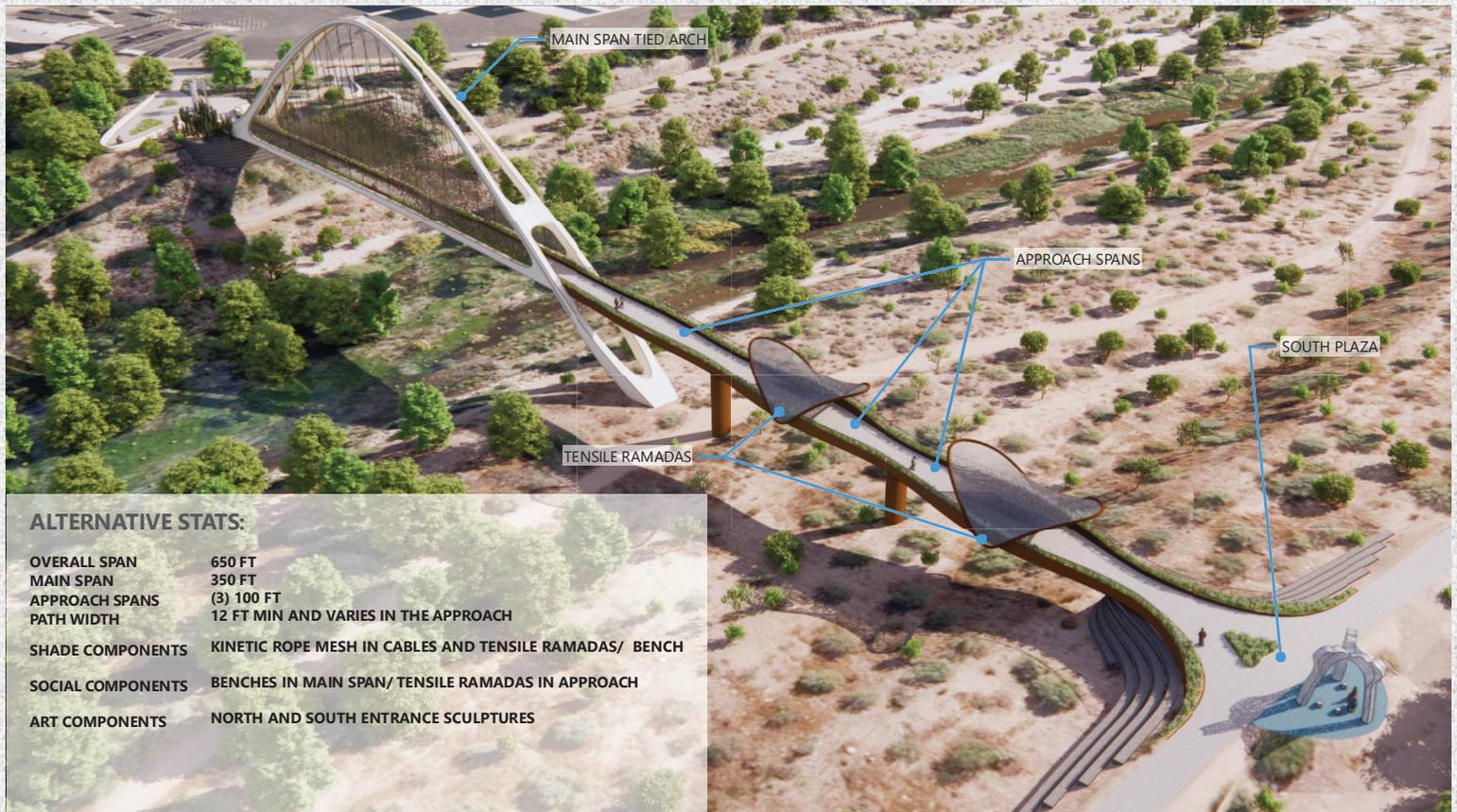


CONCEPTS RENDERINGS ALTERNATIVE 2 - CONVERGENCE



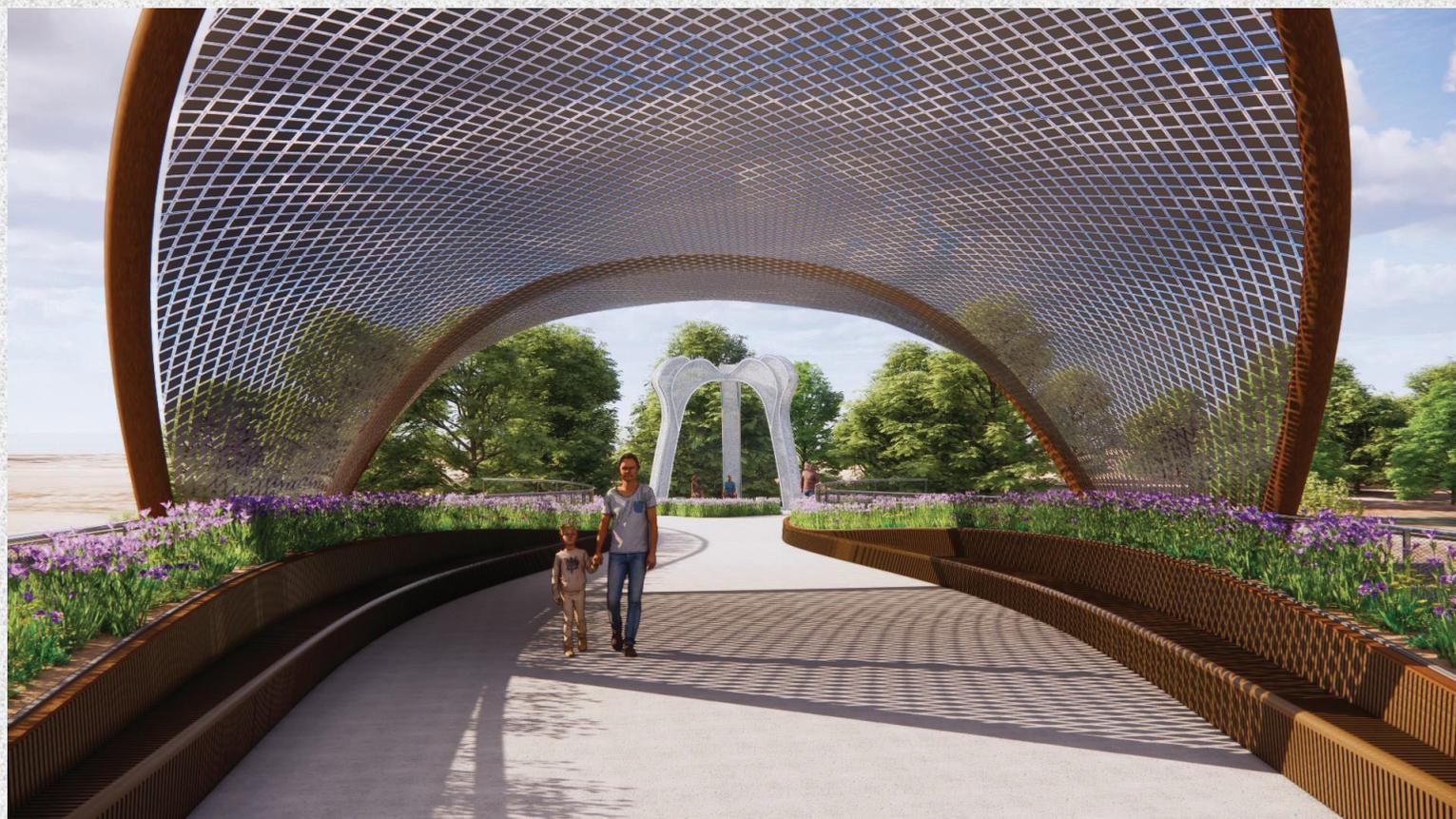
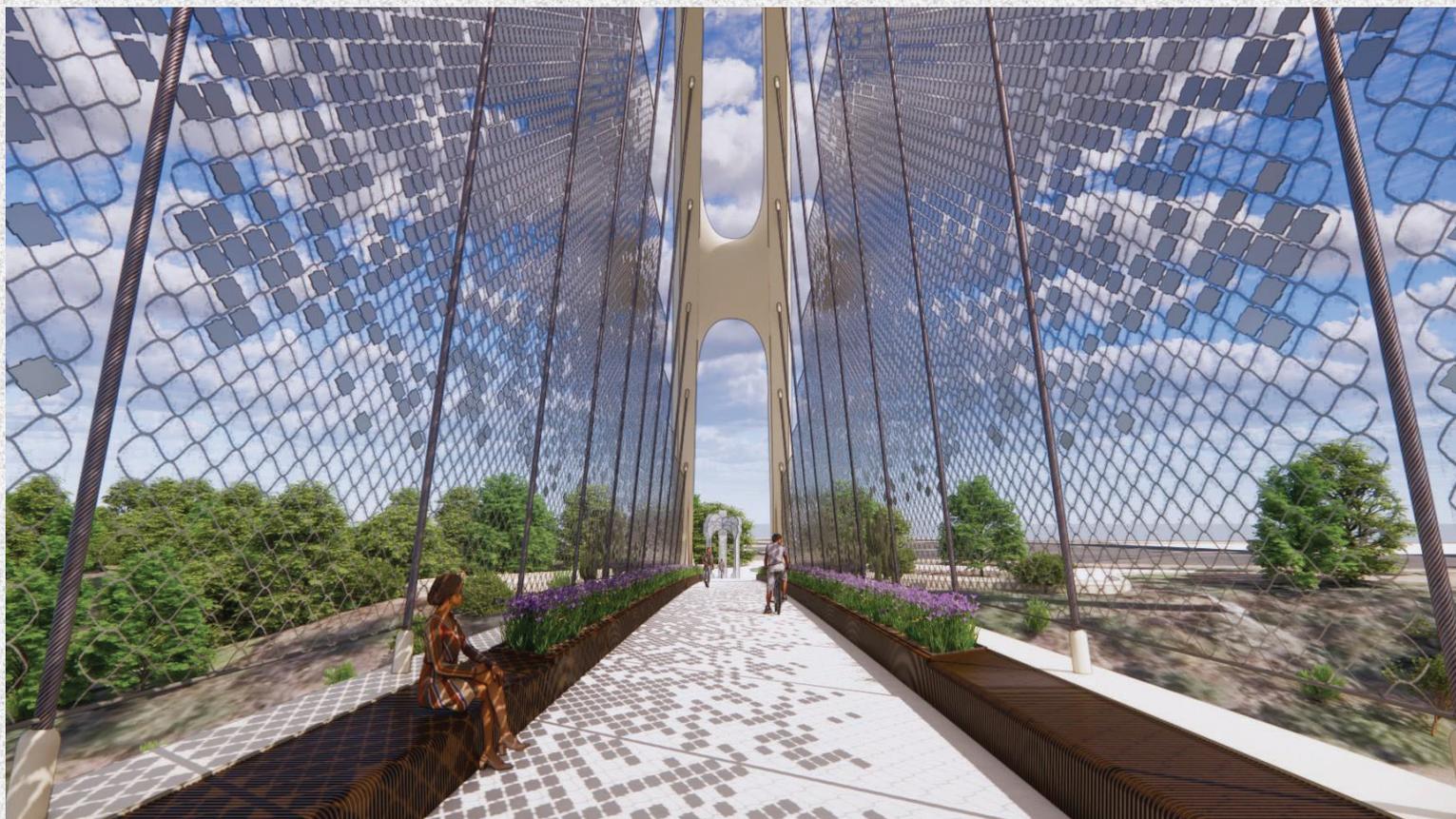


CONCEPTS RENDERINGS ALTERNATIVE 3 - UNION

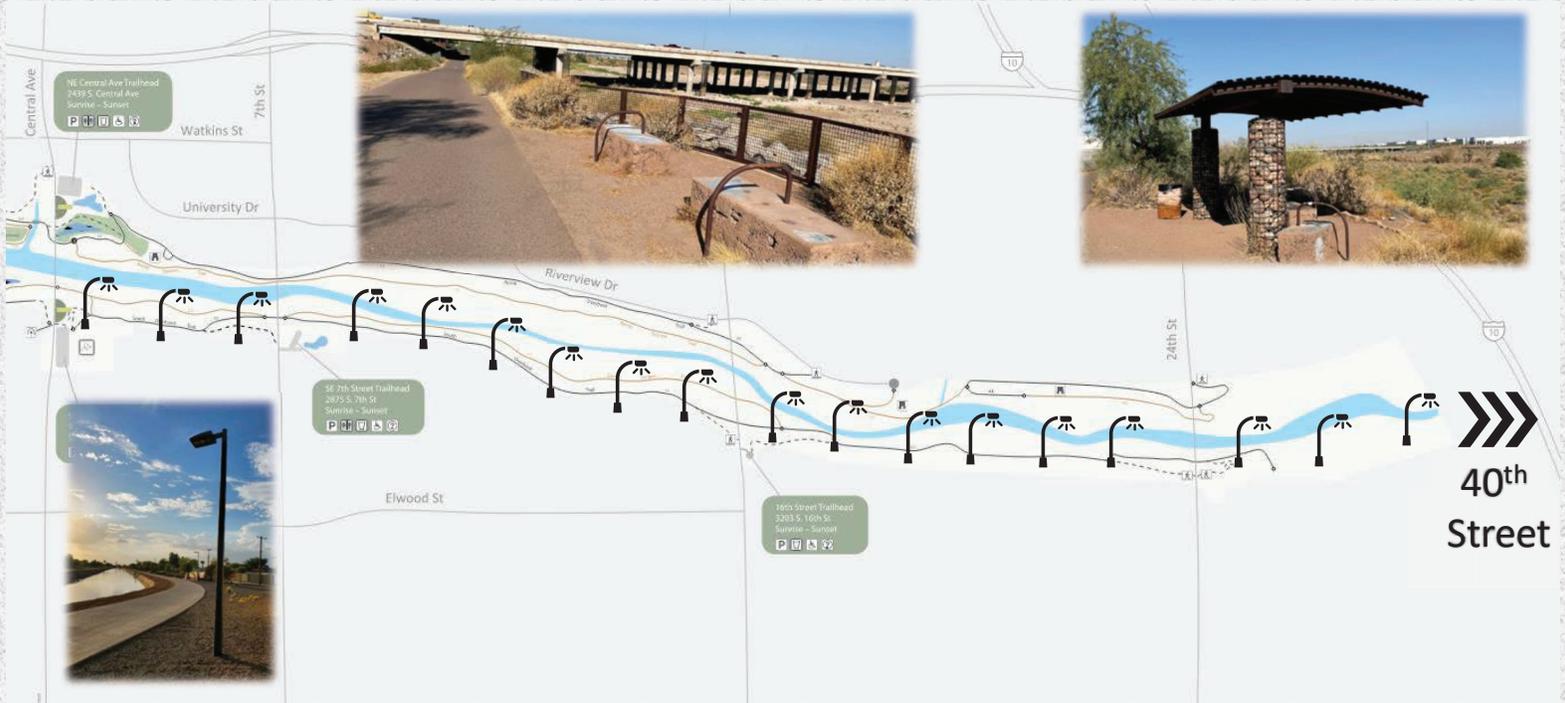


CONCEPTS RENDERINGS ALTERNATIVE 3 - UNION





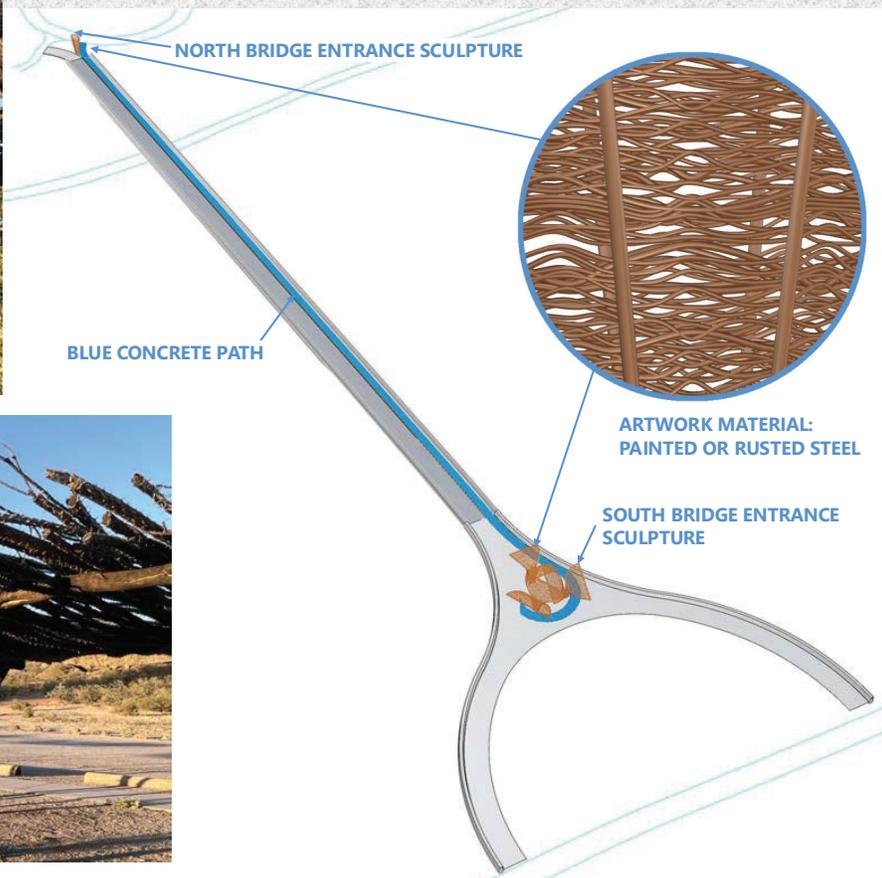
Lighting, Seating, and Ramadas

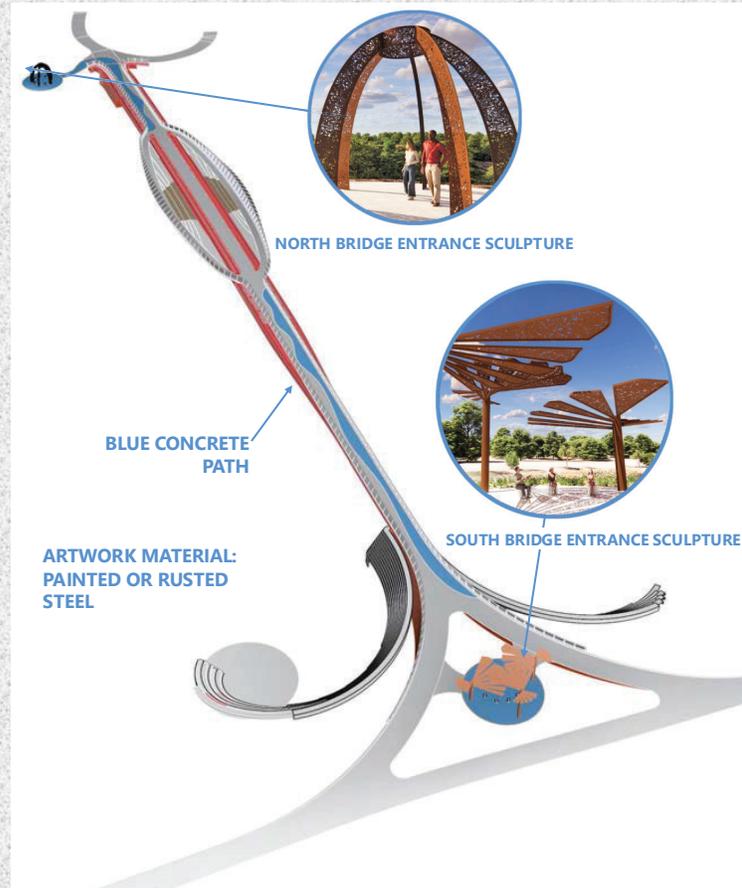
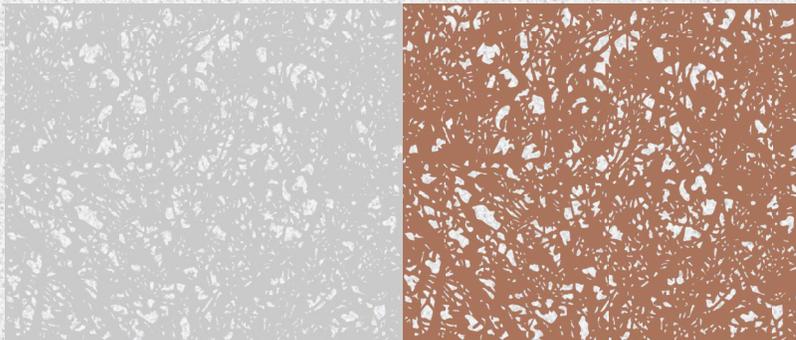


Art Integration and Inspiration

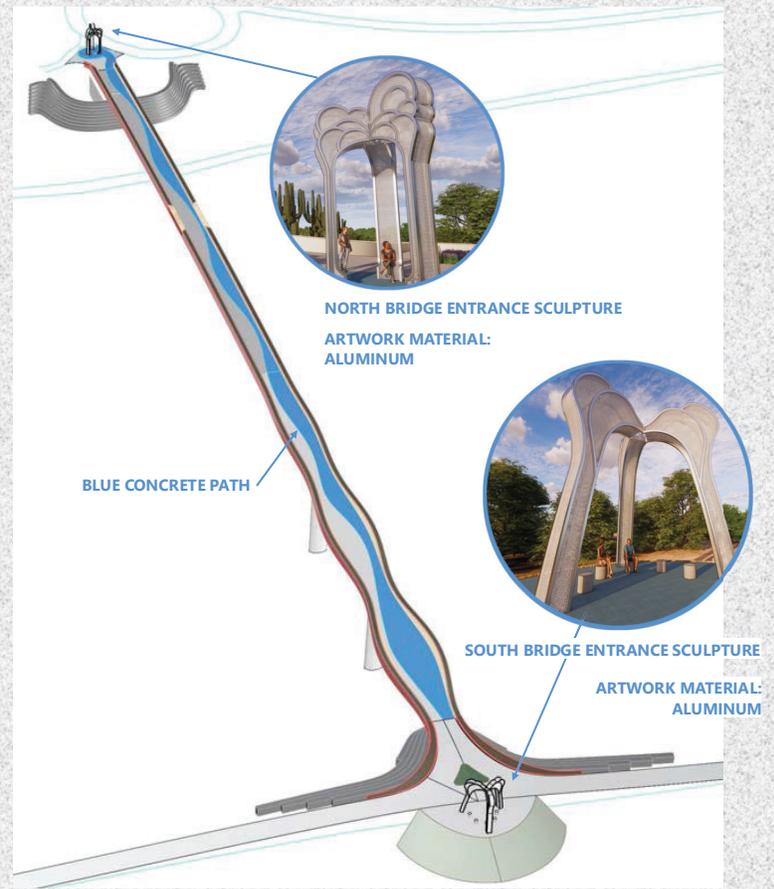
- Concept 1 – WOVEN DESERT
- Concept 2 – SHADOW PATTERN
- Concept 3 – CLOUD PAVILION





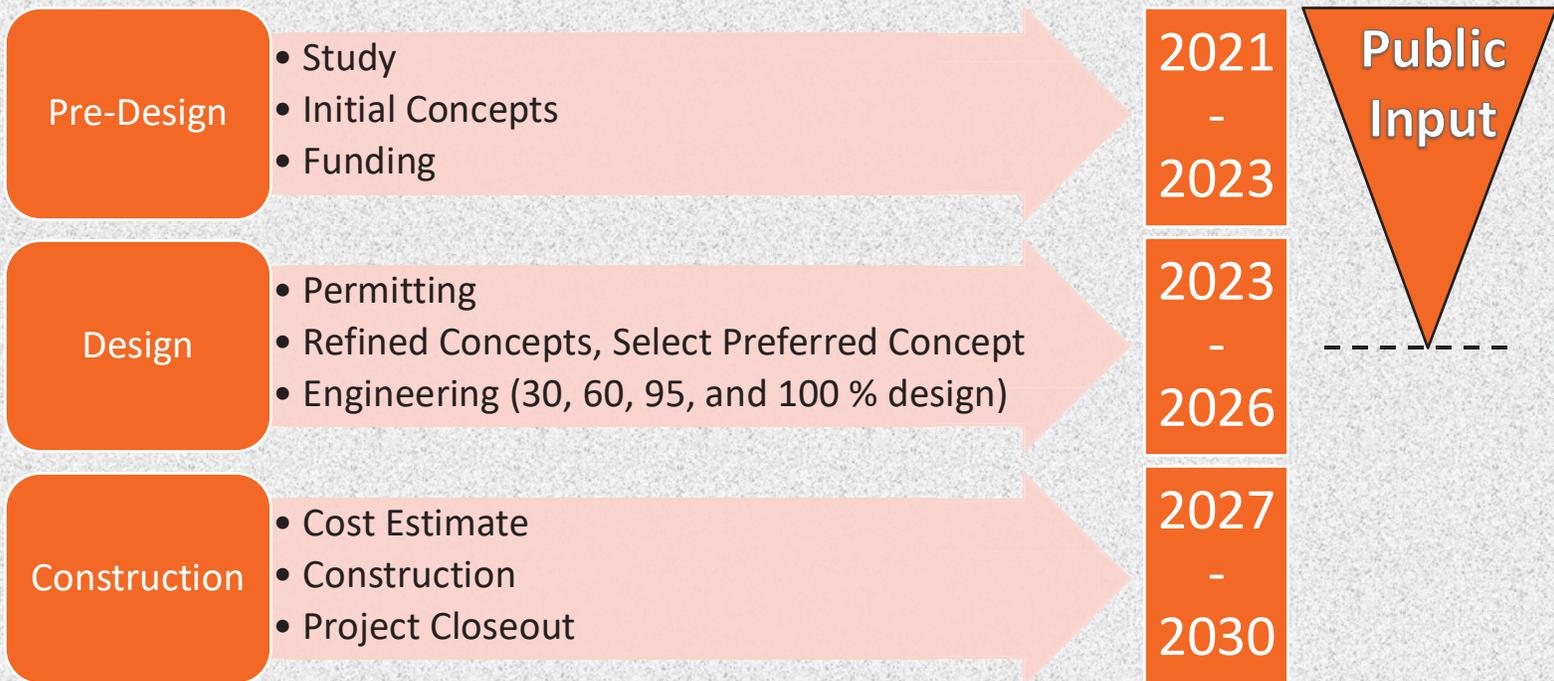








Project Schedule



Next Steps – Refined Design Options

- Please fill out our survey! Complete by 7/28/2024
- City encourages all neighbors and residents to visit the following website for regular project updates
phoenix.gov/streets/RioSaladoBridge
- Project Hotline 623-825-3444



LAND ACKNOWLEDGMENT

"Recognize Indigenous Ancestry"

Integrate native tongue(s)
(i.e., plant labels, signage, land acknowledgment statement)



EDUCATION

"Visualize Narratives"

Engravings/Etchings
(historic waterways)
Interactive kiosk
(site descriptions)



**Protect Río Salado
Spirit of Place**

SYMBOLIC IMAGERY

"Represent River Cultures"

Water symbols
Pottery designs
Basketry patterns



TYLin



THE SAGRADO

Río Salado
3rd St Bridge

Micro-Engagement

Design Feedback

Acknowledgment
Identity
&
Legacy

Micro-engagements - Survey - "Río Salado Sacred Legacy"

Río Salado Sacred Legacy

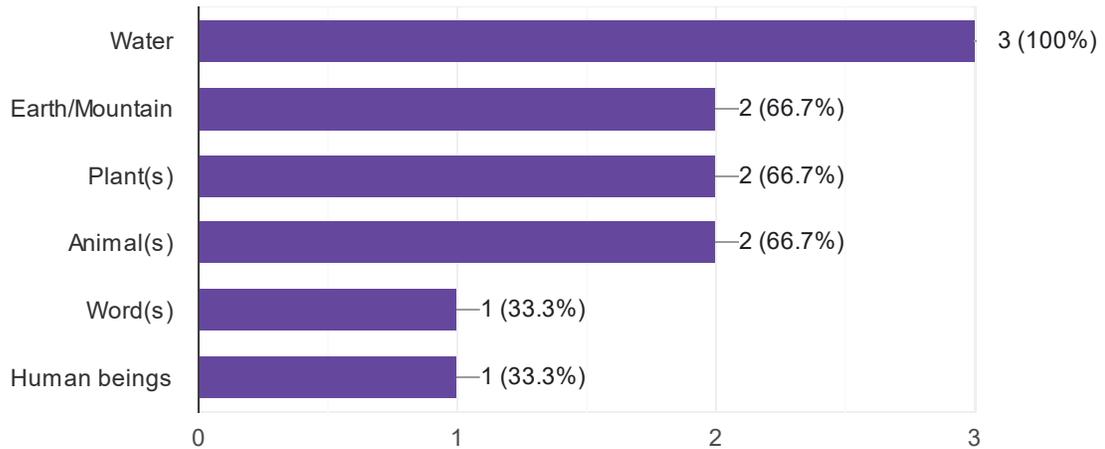
3 responses

[Publish analytics](#)

1. What natural/cultural symbols or words would make you and your community **feel properly represented** in the design of the 3rd St bridge spanning over the Río Salado? For more specific answers, choose 'other' and tell us more.



3 responses



2. On which surfaces (e.g., railings, walkways, shade structures, seating, etc.) do you believe these symbols should be placed or featured to best **honor their significance and ensure respect** for your cultural heritage?

3 responses

Walkways, Railings

All through out the project. Including signage, implemented into the artistic structure and design.

Walkways, shade structures and seatings



3. Lastly, please let us know what placements should be avoided to **prevent any inappropriate representation** (for example: would featuring symbols or words on surfaces where people walk or stand on result in improper or offensive depiction?)

3 responses

Where people walk

Not in places that will be walked on

I would believe putting certain symbols where people are stepping on them would not be appropriate.

4. (Optional) Share with us any additional comments or information project teams should be conscious about.

1 response

Please be mindful of the O'otham narrative

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Google Forms





APPENDIX B – BRIDGE PLAN & ELEVATION AND TYPICAL SECTION

RIO SALADO
CENTRAL AVENUE TO EAST OF
40TH STREET

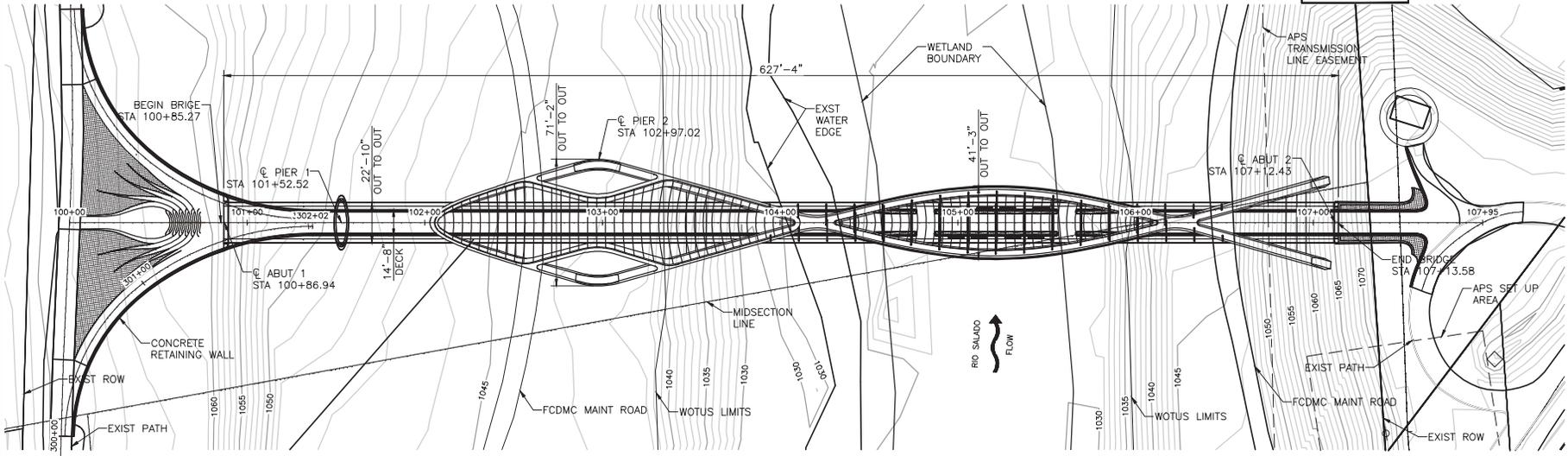


PRELIMINARY
30%
NOT FOR
CONSTRUCTION
OR RECORDING

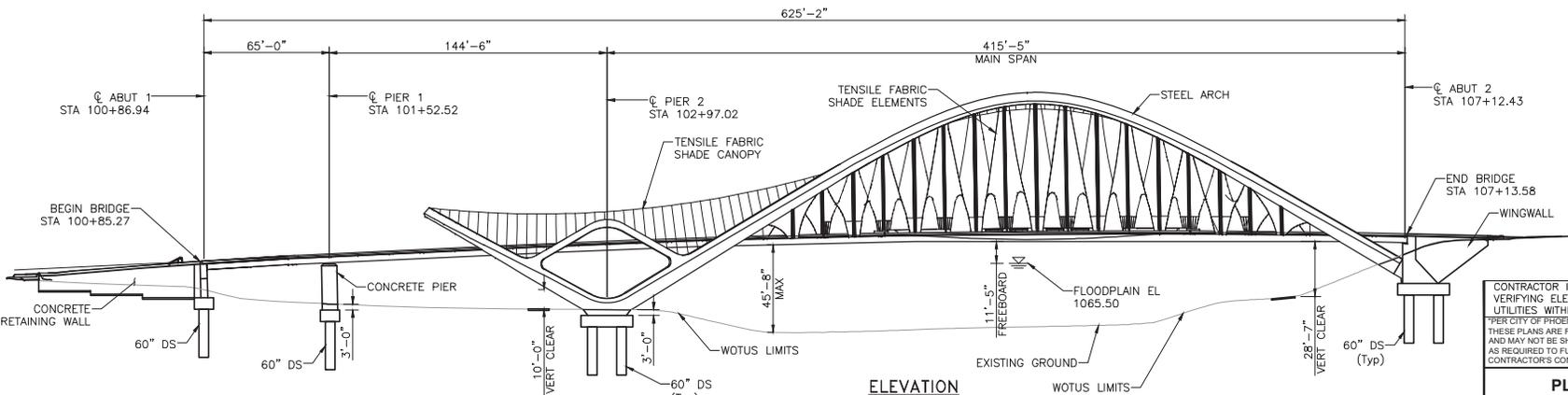
F.H.W.A. REGION	STATE	PROJ. NO.	NO.	TOTAL	AS BUILT
9	ARIZ.	ST87600140-1	.	.	.

TYLin
T.Y. LIN INTERNATIONAL
CONSULTING ENGINEER

DES: RCS DR: BTR CK: DF DATE: 9/24



PLAN
SCALE: 1"=30'-0"



ELEVATION
SCALE: 1"=30'-0"



CONTRACTOR IS RESPONSIBLE FOR LOCATING AND VERIFYING ELEVATIONS FOR ALL UNDERGROUND UTILITIES WITHIN THE PROJECT LIMITS.
PER CITY OF PHOENIX CITY CODE CHAPTER 2, SECTION 2-28. THESE PLANS ARE FOR OFFICIAL USE ONLY AND MAY NOT BE SHARED WITH OTHERS EXCEPT AS REQUIRED TO FULFILL THE OBLIGATIONS OF THE CONTRACTOR'S CONTRACT WITH THE CITY OF PHOENIX.

PLAN & ELEVATION
CITY OF PHOENIX, ARIZONA
DESIGN & CONSTRUCTION MANAGEMENT

RIO SALADO
CENTRAL AVENUE TO EAST OF 40TH ST
ST87600140-1

DR:	DES:	CK:	SHEET	TOTAL	AS
BTR	RCS	DF	8	XX	BUILT
DATE: 9/24	DATE: 9/24	DATE: 9/24			

NO.	DESCRIPTION	REV. BY	DATE

C:\Users\brandon.rudolph\OneDrive\Documents\TYLin\Projects\ST87600140-1\Drawings\ST87600140-1-STR-Plan-Elevation.dwg
 9/17/2024 8:27:04 PM
 Brandon Rudolph TY Lin Int'l Scaled: 1"=30'-0"



APPENDIX C – PREFERRED ALTERNATIVE REFINED RENDERINGS

The following pages are renderings of the most current refined design iteration of Alternative 2, “Convergence.”



APPENDIX C – PREFERRED ALTERNATIVE LATEST RENDERINGS

The following pages are renderings of the latest design iteration of Alternative2, “Convergence.”

