BOARD OF COMMISSIONERS **AGENDA** **AUGUST 10, 2015**

CALL TO ORDER - Sheriff Fuson

INVOCATION – Chaplain Joe Creek

ROLL CALL – County Clerk

CERTIFICATES OF APPRECIATION FOR 20TH ANNUAL BACK-TO-SCHOOL BASH

1. Linda Satchwill & Chloe Vanlandingham from First Baptist Church
2. Carrie Smith from Grace Fellowship Church
3. Paul Scott and Paul Zook from Hilldale Baptist Church
4. Dorlisha White from LEAP Organization
5. Malcolm Amos and Peggy Amos from Faith Outreach Church

PROCLAMATIONS

1. Presidential Award for Excellence - Micahel Brown
2. Fund Raiser Recognition – Ella Muizniek
3. Emerging Leader Recognition – Joey Smith
4. Suicide Prevention Awareness Month – Cindy Johnson; Tim Parrish; Teresa Carroll; Kara Merriam; Tiffany Ladd

APPROVAL OF JULY 6 & JULY 13, 2015 MINUTES

VOTE ON ZONING RESOLUTIONS

CZ-10-2015: Application of James W. Allen from R-1 to C-5

CZ-11-2015: Application of William R. Dyer from R-1 to C-5

VOTE ON OTHER RESOLUTIONS

15-8-1: Resolution to Adopt an Interlocal Agreement Between the City of Clarksville and Montgomery County for Joint Funding from the Bureau of Justice Assistance of the United States Department of Justice on a Joint Award of Federal Byrne Justice Assistance Grant Funds

15-8-2: Resolution Authorizing the Acceptance and Permission to Spend Grant Funds from the Kresge Foundation for the Montgomery County Health Department

15-8-3: Resolution of the Montgomery County Board of Commissioners Authorizing the Acceptance of Grant Funds from the Tennessee Department of Children's Services Family Intervention Services Program

15-8-4: Resolution to Appropriate Local Matching Funds for a Federal Grant to Perform Construction on Runway 17/35 and Associated Taxi-Way at the Clarksville Regional Airport Outlaw Field

15-8-5: Resolution to Purchase Property for the Construction of a Civic Plaza

15-8-6: Resolution to Accept a Donation from the Clarksville Civitan Club to Help Construct an ADA Sidewalk at Rotary Park

15-8-7: Resolution to Change the Commencement Hour of the Monthly County Commission Meetings

15-8-8: Resolution to Accept Grant Funds for the Enhancement of Services Provided by the University of Tennessee Agricultural Extension/Montgomery County Commercial Kitchen

15-8-9: Resolution Consolidating Legal Service and Fees

15-8-10: Resolution to Allow Montgomery County to Enter Into Mutually Beneficial Purchasing Inter-Local Agreements with Fort Campbell Agencies

15-8-11: Resolution Relative to Motor Vehicle Racing

15-8-12: Resolution to Accept a Grant from the State of Tennessee Department of Transportation for a Cumberland River Waterway Intermodal Facility

15-8-13: Resolution to Establish Tax Incremental Financing (TIF) **(will need approval to suspend the rules)**

UNFINISHED BUSINESS

REPORTS

1. County Clerk's Report – **(requires approval by Commission)**

REPORTS FILED

1. Capital Projects – Construction Update Report
2. Highway Dept. – Yearly Inventory List
3. Airport Quarterly Report
4. **Adequate Facilities Tax and Permit Revenue Reports for July 2015**
5. **Accounts & Budgets Monthly Report**
6. **Highway Dept – Quarterly Report**

7. **Highway Dept – Yearly Report**
8. **Trustee's Report**

APPOINTMENTS BY COUNTY MAYOR – Mayor Durrett

ANNOUNCEMENTS

1. American Red Cross Blood Drive, Tuesday, August 11 from 9:00 a.m. to 2:00 p.m. at the Civic Hall. Please see Elizabeth Black for an appointment.

ADJOURN – Sheriff Fuson

CZ-11-2015

RESOLUTION OF THE MONTGOMERY COUNTY BOARD OF COMMISSIONERS AMENDING THE ZONE CLASSIFICATION OF THE PROPERTY OF WILLIAM R DYER

WHEREAS, an application for a zone change from R-1 Single-Family Residential District to C-5 Highway & Arterial Commercial District has been submitted by William R Dyer and

WHEREAS, said property is identified as County Tax Map 39, parcel 22.00 p/o, containing 2.97 +/- acres, situated in Civil District 13, located Property located on the east frontage of Rollow Lane 1,600 +/- feet north of the Rossview Rd. & Rollow Lane intersection.; and

WHEREAS, said property is described as follows:

Beginning at an iron pin in the east right of way of Rollow Lane, being the northwest corner of the Cornerstone Worship Center property, also being the southwest of the herein described parcel, thence North 03 degrees 54 minutes 32 seconds East for 416.37 feet to a point; thence leaving Rollow Lane on a new zone line, South 85 degrees 23 minutes 28 seconds East for 315.81 feet to a point, lying in the west property line of the Cumberland Land Development property, also being the northeast corner of the herein described parcel; thence along the Cumberland Land Development west property line South 04 degrees 36 minutes 32 seconds West for 410.21 feet to the Cornerstone Worship Center north property line, also being the southeast corner of herein described parcel; thence North 86 degrees 31 minutes 13 seconds West for 310.79 feet to the point of beginning, containing 2.97 +/- acres, further identified as (Tax Map 39, Parcel 22.00 p/o)

WHEREAS, the Planning Commission staff recommends APPROVAL and the Regional Planning Commission recommends APPROVAL of said application.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of County Commissioners assembled in regular session on this 10th day of August, 2015, that the zone classification of the property of William R Dyer from R-1 to C-5 is hereby approved.

Duly passed and approved this 10th day of August, 2015.

Sponsor David L. Ripple

Commissioner Joe Clark

Approved _____

County Mayor

Attested: _____

County Clerk

CZ-10-2015

RESOLUTION OF THE MONTGOMERY COUNTY BOARD OF COMMISSIONERS AMENDING THE ZONE CLASSIFICATION OF THE PROPERTY OF JAMES W ALLEN

WHEREAS, an application for a zone change from R-1 Single-Family Residential District to C-5 Highway & Arterial Commercial District has been submitted by James W Allen and

WHEREAS, said property is identified as County Tax Map 53, parcel 31.00, containing 6.1 acres, situated in Civil District 13, located Property on the north frontage of Dover Rd. located 1,575 +/- feet east of the Dover Rd. & Liberty Church Rd. intersection.; and

WHEREAS, said property is described as follows:

Beginning at a 1/2" iron rod set lying on the north margin of SR 76 being Schlerintzaver southeast corner and this tracts southwest corner and the true point of beginning, thence leaving the road and with the Schlerintzaver and with the center of the ditch the following 5 call's North 11 degrees 23 minutes 37 seconds West for a distance of 203.60 feet; thence North 09 degrees 10 minutes 28 seconds West for a distance of 117.31 feet; thence North 01 degree 33 minutes 47 seconds West for a distance of 282.53; thence leaving Schlerintzaver and with Parr and continuing with the center of the ditch North 01 degree 15 minutes 30 seconds East for a distance of 76.81 feet; thence , North 10 degrees 21 minutes 44 seconds East for a distance of 143.86 feet to a 1" Steel Eye Bar in the center of the ditch; thence leaving Parr and ditch and with the J & N Inc. property North 64 degrees 55 minutes 44 seconds East for a distance of 34.98 feet to a magnetic nail found on root of 30" Ash Tree; thence, South 87 degrees 12 minutes 27 seconds East for a distance of 123.28 feet to a ½" iron rod found; thence North 89 degrees 57 minutes 07 seconds East for a distance of 157.37 feet to a 1" steel eye bar at fence corner; thence South 00 degrees 36 minutes 51 seconds East for a distance of 324.49 feet to a ½" iron rod found; thence, leaving J & N Inc. and with Tatuli and generally following the meanders of a fence South 00 degrees 17 minutes 18 seconds East for a distance of 477.08 feet to a ½" iron rod set lying on the noth margin of the Road; thence with the north margin of Road South 85 degrees 10 minutes 45 seconds West for a distance of 279.99 feet to the Point of Beginning; containing 6.1 +/- acres further identified as (Tax Map 53, Parcel 31.00)

WHEREAS, the Planning Commission staff recommends APPROVAL and the Regional Planning Commission recommends APPROVAL of said application.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of County Commissioners assembled in regular session on this 10th day of August, 2015, that the zone classification of the property of James W Allen from R-1 to C-5 is hereby approved.

Duly passed and approved this 10th day of August, 2015.

Sponsor David A. Ripple

Commissioner Joe Lucas

Approved _____

County Mayor

Attested: _____

County Clerk

RESOLUTION TO ADOPT AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF CLARKSVILLE AND MONTGOMERY COUNTY FOR JOINT FUNDING FROM THE BUREAU OF JUSTICE ASSISTANCE OF THE UNITED STATES DEPARTMENT OF JUSTICE ON A JOINT AWARD OF FEDERAL BYRNE JUSTICE ASSISTANCE GRANT FUNDS

WHEREAS, the United States Department of Justice Bureau of Justice Assistance has granted $56,323.00 for fiscal year 2016 to be divided equally between the City of Clarksville and Montgomery County for various projects including the monthly service for mobile data terminals and associated wireless data equipment; and

WHEREAS, the amount awarded to Montgomery County of $28,161.00 will support the continued use of mobile cellular data devices resulting in deputies being able to access essential information in the performance of their duties while in the field.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Montgomery County, Tennessee, meeting this the 10th day of August, 2015, that:

SECTION 1. Montgomery County hereby accepts $28,161.00 from the United States Department of Justice, Bureau of Justice Assistance for the purposes herein stated and detailed in the MOU between the City of Clarksville and Montgomery County.

SECTION 2. There is no required match and no requirement that these projects be continued under the terms of the block grant at its expiration.

This resolution shall take effect upon its adoption.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attest _____
County Clerk

GMS APPLICATION NUMBER **2015-H~~2432~~4071-TN-DJ**

INTERLOCAL AGREEMENT BETWEEN THE CITY OF CLARKSVILLE, TN and THE COUNTY OF MONTGOMERY, TN REGARDING THE 2015 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD

This Agreement is made and entered into this 12 day of June, 2015, by and between The COUNTY of Montgomery acting by and through its governing body, the County Commission, hereinafter referred to as COUNTY, and the CITY of Clarksville acting by and through its governing body, the City Council, hereinafter referred to as CITY, both of Montgomery County, State of Tennessee, witnesseth:

WHEREAS, a combined, disparate allocation of funds of $56,323 from the JAG Program to the CITY and the COUNTY establishes the need for a joint JAG Program Award Application, and

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party: and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this agreement: and

WHEREAS, the CITY agrees to provide the COUNTY $28,161 from the JAG award for the Law Enforcement Program; and

WHEREAS, the CITY and COUNTY believe it to be in their best interests to reallocate the JAG funds,

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

CITY agrees to reimburse COUNTY a total of $28,161 based upon expenditure records.

Section 2.

COUNTY agrees to use $28,161 for the Law Enforcement Program no later than September 30, 2018.

Section 3.

Nothing in the performance of this Agreement shall impose any liability for claims against COUNTY other than claims for which liability may be imposed by the Tennessee Governmental Tort Liability Act.

Section 4.

Nothing in the performance of this Agreement shall impose any liability for claims against CITY other than claims for which liability may be imposed by the Tennessee Governmental Tort Liability Act.

GMS APPLICATION NUMBER 2015-H~~2432~~4071-TN-DJ

Section 5.

The CITY shall serve as Applicant and Fiscal Agent for the 2015 JAG Program Application, shall advise the COUNTY of balance available information on a periodic basis, and shall prepare all reports. The COUNTY shall submit claims/requests for distribution of COUNTY share of funds to the CITY for payment processing and provide such summary information as may be required for periodic reports.

Section 6.

Each party to this agreement will be responsible for its own actions in providing services under this agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 7.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 8.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

Section 9.

This interlocal agreement will become effective upon adoption of enabling resolutions by the governing bodies of both the County and the City, at which time the applicant shall proceed to accept the JAG grant award.

For the CITY OF CLARKSVILLE, TN:

WMB Kim McMillan, Mayor — 6/12/15 Date

For the COUNTY OF MONTGOMERY, TN

Jim Durrett, Mayor — 6/9/15 Date

RESOLUTION AUTHORIZING THE ACCEPTANCE AND PERMISSION TO SPEND GRANT FUNDS FROM THE KRESGE FOUNDATION FOR THE MONTGOMERY COUNTY HEALTH DEPARTMENT

WHEREAS, Joey Smith was selected by the Kresge Foundation as one of the Emerging Leaders in Public Health; and

WHEREAS, Joey Smith is the director of the Montgomery County Health Department; and

WHEREAS, this honor comes with the award of a grant up to the amount of $125,000.00 to be utilized toward an action learning project defined in the grant application; and

WHEREAS, the Montgomery County Health Department has been approved to receive these funds in the full amount of $125,000.00 for this project; and

WHEREAS, this grant will not require any matching funds from the county.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners assembled in Regular Session on this 10th day of August, 2015, that the Montgomery County Health Department accept grant funds from the Kresge Foundation in the amount of $125,000.00 for the purpose herein stated and as detailed below:

REVENUE	**101-55110-00000-54-47590**	**$125,000.00**
Supplies	101-55110-00000-54-54990	$36,000.00
Prof. Services	101-55110-00000-54-53990	$42,000.00
Advertising/ Health Promotion	101-55110-00000-54-53020	$40,000.00
Travel	101-55110-00000-54-53550	$7,000.00
	Total	**$125,000.00**

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

RESOLUTION OF THE MONTGOMERY COUNTY BOARD OF COMMISSIONERS AUTHORIZING THE ACCEPTANCE OF GRANT FUNDS FROM THE TENNESSEE DEPARTMENT OF CHILDREN'S SERVICES FAMILY INTERVENTION SERVICES PROGRAM

WHEREAS, the Tennessee Department of Children's Services (DCS) has awarded Montgomery County Juvenile Court a cost reimbursement base grant award to fund child and family intervention services, referred to as the Family Intervention Services Program, effective July 1, 2015 through June 30, 2016; and

WHEREAS, the total grant contract award from DCS amounts to $70,929.00; per the agreement it is one hundred percent (100%) grant funded, requiring no local match dollars during the allocation period.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners assembled in Regular Session on this 10th day of August, 2015, that Montgomery County accept the grant in the amount of $70,929.00 to fund the Family Interventions Services Program; and

BE IT FURTHER RESOLVED that the County Mayor is authorized to execute an agreement and other necessary documents required to signify acceptance of grant funds from the Tennessee Department of Children's Services. Upon receipt of the fully executed grant agreement, the Director of Accounts and Budgets shall establish the necessary fund accounts providing for related revenues and expenditures stated in the contract, this resolution intends to have the effect of appropriation to that purpose accordingly.

SECTION 1. Montgomery County hereby accepts the grant award from the Tennessee Department of Children's Services for the purpose herein stated and as detailed below:

REVENUE	101-54240-00000-54-46110-G5234	$70,929
INSTRUCTOR/CASE MGR	101-54240-00000-54-51110-G5234	$40,134
SOCIAL SECURITY	101-54240-00000-54-52010-G5234	$2,423
MEDICARE	101-54240-00000-54-52120-G5234	$567

LIFE INSURANCE	101-54240-00000-54-52060-G5234	$53
STATE RETIREMENT	101-54240-00000-54-52040-G5234	$5,547
COMMUNICATION	101-54240-00000-54-53070-G5234	$1,000
OTHER CONTRACTED SVCS	101-54240-00000-54-53990-G5234	$500
TRAVEL	101-54240-00000-54-53550-G5234	$1,517
TUITION	101-54240-00000-54-53560-G5234	$2,756
OTHER SUPPLIES, MATERIALS	101-54240-00000-54-54990-G5234	$9,132
WORKERS COMP	101-54240-00000-54-55130-G5234	$500
EQUIPMENT	101-54240-00000-54-57990-G5234	$6,800
	TOTAL	**$70,929**

Duly passed and approved this 10th day of August, 2015.

SPONSOR _____

COMMISSIONER _____

APPROVED _____
County Mayor

Attested _____
County Clerk

RESOLUTION TO APPROPRIATE LOCAL MATCHING FUNDS FOR A FEDERAL GRANT TO PERFORM CONSTRUCTION ON RUNWAY 17/35 AND ASSOCIATED TAXI-WAY AT THE CLARKSVILLE REGIONAL AIRPORT OUTLAW FIELD

WHEREAS, the Clarksville Regional Airport will be awarded federal discretionary funding in the amount of $10,000,000.00 through the Tennessee Department of Transportation – Aeronautics Division, to be utilized for the designed runway overlay project; and

WHEREAS, the scope of work to be performed at the Clarksville Regional Airport will include a runway deviation of standards dip repair on 17/35 to FAA standards, a 300 foot runway centerline to taxiway centerline relocation to FAA C-II standards, runway overlay to replace deteriorating surface, correct flight side runway and taxiway markings and signage with new, and relight runway 17/35 including associated taxiway and apron area with LED airfield lighting; and

WHEREAS, the City of Clarksville and Montgomery County local governments jointly and equally fund the Clarksville Regional Airport Authority; and

WHEREAS, the funding will require a 5% match in the amount of $500,000.00 to be funded equally by the County and the City of Clarksville; and

WHEREAS, the County of Montgomery's equal share of the matching funds is 2.5% in the amount of $250,000.00 and matched by the City of Clarksville's 2.5% in the amount of $250,000.00; and

WHEREAS, the required match is one time funding with no continuing dispersal of County Funds related to the Project.

NOW THEREFORE BE IT RESOLVED, by the Montgomery County Board of Commissioners, assembled in regular business session this 10th day of August, 2015, that the appropriation budget for the Montgomery County General Capital Projects Fund be increased by $250,000.00 to meet the funding requirements to obtain the Federal Discretionary Funds through the Tennessee Department of Transportation Department – Aeronautics Division.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

RESOLUTION TO PURCHASE PROPERTY FOR THE CONSTRUCTION OF A CIVIC PLAZA

WHEREAS, Montgomery County has the opportunity to purchase the property located at 215 Legion Street, Clarksville, Tennessee, known as the Bank of America building and desires to purchase adjacent property known as Regions Bank, and the Better Business Bureau building; and

WHEREAS, the estimated price to purchase above mentioned property, demolish, site work, design, construction and completion of a Civic Plaza is $7,000,000; and

WHEREAS, in the event the City of Clarksville chooses to partner with Montgomery County with this project, then the City of Clarksville and Montgomery County will enter into an all inclusive Interlocal Agreement or individual agreements for the purchase, demolition, design, construction and day-to-day maintenance and operations, which may be considered phases of this project; and

WHEREAS, Montgomery County will add this project to the capital projects list for 2016 budget year and can efficiently handle the incurrence of debt associated with this project: and

WHEREAS, the aforementioned park will be for public use for all citizens of Montgomery County and surrounding area.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners assembled in Regular Session on this 10th day of August, 2015, that the 2016 capital projects budget in hereby amended.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

RESOLUTION TO ACCEPT A DONATION FROM THE CLARKSVILLE CIVITAN CLUB TO HELP CONSTRUCT AN ADA SIDEWALK AT ROTARY PARK

WHEREAS, the Montgomery County Parks & Recreation Department would like to accept a donation from the Clarksville Civitan Club to help with an ADA sidewalk at Rotary Park; and

WHEREAS, the Clarksville Civitan Club has agreed to donate to the Montgomery County Parks & Recreation Department the sum of $1,540.00 toward the purchase price of the sidewalk; and

WHEREAS, the Montgomery County Engineer will oversee the receiving and installation of said sidewalk at Rotary Park.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners meeting in regular session on this 10th day of August, 2015, that this legislative body agrees to accept the monetary donation of $1,540.00 from the Clarksville Civitan Club for the specific purpose of helping construct an ADA sidewalk at Rotary Park.

SECTION 1. Montgomery County hereby accepts the following donation for the purpose herein stated and as detailed below:

DONATIONS	171-91150-00000-91-48160-P0902	$1,540.00
OTHER CONSTRUCTION	171-91150-00000-91-57910-P0902	$1,540.00

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

RESOLUTION TO CHANGE THE COMMENCEMENT HOUR OF THE MONTHLY COUNTY COMMISSION MEETINGS

WHEREAS, according to Tennessee Code Annotated (TCA) §5-5-104, the county legislative body is required to meet at least four times annually at a time and place established by resolution of the county legislative body; and

WHEREAS, currently the legislative body meets the first and second Monday of each month unless such Monday falls on a holiday, and in the event that happens the meeting would be held on Tuesday of same week. The commission meetings commencement hour is currently at 7:00 p.m. but effective with the August 3, 2015 commission meeting, all commission meetings, unless otherwise posted, will begin at 6:00 p.m.

NOW, THEREFORE BE IT RESOLVED by the Montgomery County Board of Commissioners assembled in Regular Session on this 10th day of August, 2015, that the commencement hour of all county commission meetings, unless otherwise posted, will be 6:00 p.m., effective August 3, 2015.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

15-8-8

RESOLUTION TO ACCEPT GRANT FUNDS FOR THE ENHANCEMENT OF SERVICES PROVIDED BY THE UNIVERSITY OF TENNESSEE AGRICULTURAL EXTENSION/MONTGOMERY COUNTY COMMERCIAL KITCHEN

WHEREAS, the University of Tennessee Agricultural Extension Service is a state-wide educational organization that brings research-based information about agriculture, family, and consumer sciences and resource development to the people of Tennessee; and

WHEREAS, the University of Tennessee Agricultural Extension/Montgomery County Commercial Kitchen, located at 1030-A Cumberland Heights Road, Clarksville, TN, 37040, was equipped via a combination of funds from Montgomery County Government and the United States Department of Agriculture Rural Development; and

WHEREAS, the purpose of this certified kitchen facility is to assist entrepreneurs and new business owners in Montgomery and surrounding counties in creating a food product for resale; and

WHEREAS, the County has applied for and has been awarded a USDA Rural Business Development Grant (CFDA #10.351) in the amount of $18,820.00 to assist in the further development of this facility.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners meeting this the 10th day of August, 2015, that:

SECTION 1. Montgomery County hereby accepts the USDA Rural Business Development Grant in the amount of $18,820.00 to equip the certified kitchen facility:

USDA OTHER	**101-57100-00000-57-47114-G1610**	**$18,820.00**
OTHER EQUIPMENT	**101-57100-00000-57-57900 –G1610**	**$18,820.00**

SECTION 2. There is no required match and no requirement that this project be continued under the terms of the grant at its expiration.

Duly passed and approved this the 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

RESOLUTION CONSOLIDATING LEGAL SERVICE AND FEES

WHEREAS, currently multiple departments have a line item in their budget for attorneys fees and services; and

WHEREAS, Timothy Harvey, County Attorney for Montgomery County, Tennessee, receives inquiries and assistance requests from multiple departments; and

WHEREAS, on July 2, 2015, the Loss Control Committee met and recommended that in an effort to be more efficient and financially responsible, all legal fees and services should be moved from multiple departmental legal fees line item and consolidated under the County Attorney legal fees line item, account code 51400; and

WHEREAS, Accounts & Budgets will move such appropriations from the County departments budgets as detailed below:

HUMAN RESOURCES	101-51310-00000-51-53310	($ 1,300.00)
REGISTER OF DEEDS	101-51600-00000-51-53310	($ 600.00)
CODES COMPLIANCE	101-51750-00000-51-53310	($ 2,000.00)
PURCHASING	101-52200-00000-52-53310	($ 50.00)
SHERIFF'S DEPARTMENT	101-54110-00000-54-53310	($ 12,500.00)
RABIES & ANIMAL CNTL	101-55120-00000-55-53310	($ 1,000.00)
AMBULANCE SERVICE	101-55130-00000-55-53310	($ 1,500.00)
COUNTY ATTORNEY	101-51400-00000-51-53310	($ 18,950.00)

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners meeting in regular session on this the 10th day of August, 2015, that all legal fees and services be consolidated under the County Attorney line item, account code 51400.

Duly passed and approved this the 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

15-8-10

RESOLUTION TO ALLOW MONTGOMERY COUNTY TO ENTER INTO MUTUALLY BENEFICIAL PURCHASING INTERLOCAL AGREEMENTS WITH FORT CAMPBELL AGENCIES

WHEREAS, there are cost savings to be had for both parties with larger volume and additional vendors available when combining the purchasing power between Department of Defense (DOD) agencies located on Fort Campbell military installation and Montgomery County Goverment; and

WHEREAS, Montgomery County Government wishes to enter into mutually beneficial purchasing inter-local agreements with Fort Campbell agencies; and

WHEREAS, the intial agreement will be between the Fort Campbell Department of Public Works and Montgomery County Government to allow Ft Campbell Department of Public Works the ability to purchase road salt from same contract as Montgomery County Government; and

WHEREAS, this resolution will allow additional agreements on a go forward basis that will benefit both parties.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners assembled in Regular Session on this 10th day of August, 2015, that the County Mayor is authorized to enter into mutually beneficial purchasing inter-local agreements with Fort Campbell agencies.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk

RESOLUTION RELATIVE TO MOTOR VEHICLE RACING

WHEREAS, effective July 1, 2015, Tennessee race tracks and drag strips will no longer register with the Tennessee Department of Commerce and Insurance's (TDCI) Division of Regulatory Boards; and

WHEREAS, the Tennessee Legislature approved Public Chapter No. 354 (SB0480/HB0763) removing TDCI's regulation of race tracks; instead, race track owners must provide proof of insurance to the county clerk of the county where a motor vehicle race is conducted; and

WHEREAS, Tennessee Code Annotated (TCA), Title 55, Chapter 22 has been amended as follows:

55-22-101.

(a) No person, firm, or corporation shall operate or conduct any motor vehicle races on any permanent race track or other place for the holding of a motor vehicle race upon which motor vehicles of any description are raced, unless the applicant has insurance for the general public with minimum limits of one hundred thousand dollars ($100,000) per person and three hundred thousand dollars ($300,000) per accident or three hundred thousand dollars ($300,000) combined single limit, for loss because of bodily injury, including death at any time resulting from such bodily harm caused to any person or persons by the operation of the track or other place; provided, that this insurance shall not be applicable to:

(1) Drivers;

(2) Pit area personnel;

(3) All persons involved in the conduct of any motor vehicle race; or

(4) Any persons involved with the race who have signed a written release of liability.

(b) Satisfaction by the insured of a final judgment for injury shall not be a condition precedent to the duty of the insurer to make payment on account of the injury.

(c) The county clerk of the county where a motor vehicle race is conducted shall:

(1) Verify the person, firm, or corporation operating or conducting a motor vehicle race has insurance as prescribed in subsection (a); and

(2) Issue documentation to the person, firm, or corporation confirming that the requirements of subdivision (c)(1) have been met.

55-22-102. A county legislative body shall have the authority to:

(1) Provide for the times, dates, and conditions under which motor vehicle races shall be conducted; and

(2) Establish any other rule relative to the regulation and licensure of automobile race tracks that the county legislative body deems prudent and advisable.

55-22-103. The practice of participants in motor racing events of releasing the promoters thereof from liability and of assuming liability for any injuries sustained is expressly approved.

55-22-104. A violation of § 55-22-101 is a Class A misdemeanor.

55-22-105.

(a) (1) In any county that is a tourist resort county, motor vehicle racing may be permitted on not more than three (3) days a week. If racing is conducted for three (3) days a week, one (1) of the days shall be Sunday.

(2) for the purpose of this section, "tourist resort county" means any county having two (2) or more municipalities in which at least forty percent (40%) of the assessed valuation of the real property in those municipalities consists of hotels, motels, restaurants, and similar businesses serving traveling persons as shown by the tax assessment records of the county.

(b) (1) No racing shall be conducted after eleven o'clock p.m. (11:00 p.m.). At the conclusion of a racing event, the track management shall encourage all participants and patrons to vacate the premises by not later than eleven-thirty p.m. (11:30 p.m.).

(2) No racing shall be conducted on a Sunday except between twelve o'clock (12:00) noon and six o'clock (6:00 p.m.). At the conclusion of a Sunday racing event, the track management shall encourage all participants and patrons to vacate the premises by not later than six-thirty p.m. (6:30 p.m.).

WHEREAS, the county legislative body has the authorization to regulate and license race tracks and establish insurance requirements. The rules and regulations for the county will coincide with the rules and regulations adopted by the City of Clarksville, and are subject to further resolutions regulating the same as allowed by law.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners assembled in Regular Session on this 10th day of August, 2015, that this legislative body adopt TCA Title 55, Chapter 22 as amended.

BE IT FURTHER RESOLVED that this legislative body adopt the city's rules and regulations that are subject to further resolutions regulating the same as allowed by law.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____

County Mayor

Attested _____

County Clerk

requiring police notification and response per month, such incidences can be cited as separate and distinct infractions of the noise ordinance code, and can be subject to a fine of up to $25 per occurrence as permitted by T.C.A. § 62-32-321(e).

(17) Race tracks.

(a) Except as otherwise provided below, all race tracks properly licensed and operating in the City of Clarksville that conducts recreational or competitive motor vehicle racing shall not conduct said racing between the hours of twelve (12) midnight and the following eight (8) a.m., or such other time as may be established within the City of Clarksville zoning code. At the conclusion of a racing event, the track owner(s) or management shall encourage all participants and patrons to vacate the premises by not later than one (1:00) a.m. of the day following the conclusion of any racing event at twelve (12) midnight.

(b) All race tracks properly licensed and operating in the City of Clarksville on or before the effective date of this ordinance that conducts recreational or competitive motor vehicle racing shall not conduct said racing between the hours of one-thirty (1:30) a.m. and the following eight (8) a.m. At the conclusion of a racing event, the track owner(s) or management shall encourage all participants and patrons to vacate the premises by not later than two (2:00) a.m.

Sec. 10-309 - Reserved.

Sec. 10-310 – Sound Amplification Devices on Public Property

(a) The use of loudspeakers or other sound amplification devices by private individuals, groups, businesses, organizations, associations, or non-governmental entities are prohibited on city owned property, except as provided for herein.

(1) Private persons, groups, businesses, organizations, associations, or non-governmental entities renting public parks or facilities may use loudspeakers or sound amplification devices on such city owned property upon receipt of a valid permit for such use issued by the city department of parks and recreation. An applicant desiring to use a loudspeaker or other sound amplification device on city owned property shall make application for a permit for such use at least ten (10) calendar days prior to the day of use, excluding the day of application, with the department of parks and recreation, using a form adopted for such purpose by the department, along with an application processing fee in an amount to be set by the department, but in no event greater than twenty-five dollars ($25.00). The department of parks and recreation shall approve any timely submitted application, accompanied by the required processing fee, unless the proposed use of the loudspeaker or other sound amplification device will be likely to interfere with the use and

15-8-12

RESOLUTION TO ACCEPT A GRANT FROM THE STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION FOR A CUMBERLAND RIVER WATERWAY INTERMODAL FACILITY

WHEREAS, the Tennessee Department of Transportation (TDOT) wishes to enter into a grant contract by and between the State of Tennessee Department of Transportation, Montgomery County, RJ Corman Railroad Group, LLC and RJ Corman Intermodal Services, LLC in the amount of $1,000,000.00 for the provision of a Cumberland River Waterway Intermodal Facility; and

WHEREAS, this is intended to be the first stage of a three phase grant with the total funding for this overall project projected to be $7.2 million, of which $6 million in funding projected to be from TDOT with the remaining funding from RJ Corman; and

WHEREAS, Montgomery County will bear no financial responsibility during construction nor any ongoing costs to operate the facility; and

WHEREAS, RJ Corman will be the prime contractor for the project and will be responsible for overseeing all environmental and design phases.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Montgomery County, Tennessee, meeting this the 10th day of August, 2015, that Montgomery County accept $1,000,000.00 from TDOT for the purposes herein stated.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attest _____
County Clerk

AGREEMENT FOR THE CONSTRUCTION, LEASING AND OPERATION OF CUMBERLAND RIVER WATERWAY INTERMODAL FACILITY AND INDEMNITY OF MONTGOMERY COUNTY AND MONTGOMERY COUNTY PORT AUTHORITY BY R. J. CORMAN INTERMODAL SERVICES, LLC

THIS AGREEMENT is made as of the _____ day of _____, 2015, by and between Montgomery County, Tennessee ("MC"), The Montgomery County Port Authority ("MCPA") and R. J. Corman Intermodal Services, LLC ("RJCIS") (together referred to as the "Parties").

RECITALS:

1. For the reasons and to accomplish the purposes set out below, MC desires to enter into a Grant Contract, Agreement Number 140249, with the Tennessee Department of Transportation ("TDOT") (the "Grant Agreement") pursuant to which TDOT will provide partial funding to be used to expand, enlarge and modify the existing single purpose barge facility owned by Nyrstar Clarksville Inc. ("Nyrstar") and located at mile marker 122 on the Cumberland River into an intermodal facility capable of receiving, off-loading, transloading, storing, and loading of solid, liquid and gaseous cargoes by barge, rail and highway vehicles (the construction of which is referred to herein as "the Project" and which, upon completion, is referred to herein as "the Facility").

2. MCPA was created by Private Act of the Tennessee Legislature and Resolutions of MC. A part of the mission of MCPA, as stated in the Private Act creating it, is "to facilitate the movement and transfer of . . . goods and merchandise to, from and through [Montgomery] County".

3. To assist MCPA in the fulfillment of that mission, MC desires to participate as the public agency to accept, receive and disburse the public cost sharing funding from TDOT for the Project upon the request and direction of the MCPA; MCPA, MC and RJCIS desire that RJCIS act as the private enterprise to provide and invest the private sector matching funding for the Project; MCPA desires that RJCIS, through a related construction entity, construct the Facility, within the scope of the Project as set out in the aforesaid application; and desires, in accordance with Section 4(d) of the aforesaid Private Act, that MC enter into a lease with Nyrstar acquiring leasehold rights in property required to build and operate the Facility, and to simultaneously assign all of its rights and obligations in and under that lease to RJCIS, who will simultaneously assume the same, all on the terms and conditions set out herein; and finally desires to have MC and RJCIS enter into to a Grant Agreement with the Tennessee Department of Transportation ("TDOT") for Congestion Mitigation and Air Quality Act ("CMAQ") funding to be used for such purpose.

4. The aforesaid Grant Agreement, Agreement Number 140249, has been drafted for execution by all parties hereto with the exception of MCPA whose participation as a party is not required by TDOT. That Grant Agreement is attached hereto as Exhibit A and hereinafter referred to as the "Grant Agreement". The aforesaid lease is attached hereto as Exhibit B and hereinafter referred to as the "Nyrstar Lease". The Grant Agreement provides for grants of 80%

of the cost of the project (approximately $7.5 Million) which grants require a 20% matching amount and which matching amounts will be borne solely by RJCIS.

5. RJCIS is willing to act as the private enterprise to invest the public cost sharing funding and the private sector matching funding for the Project; is willing to execute all acts required of the County pursuant to the Grant Agreement; is willing to construct the Facility within the scope of the Project; and is willing to operate the Facility, following completion of the same, all on the terms and conditions set out herein and in the Grant Agreement, and will accept the assignment of the Nyrstar lease to construct and operate the Facility, and will, at all times indemnify and hold harmless MC and MCPA and reimburse to MC and MCPA all direct costs and expenses, above and beyond the properly expended 80% grant funds described above, during and following completion of the Facility, all on the terms and conditions as set out herein.

6. The purpose of this Agreement is to further set out the Parties' respective undertakings and obligations concerning the Project.

UNDERTAKINGS AND OBLIGATIONS:

1. This Agreement shall be effective for the period beginning as of the day and year first above mentioned and shall remain in force and effect until ongoing compliance obligations under the CMAQ program rules expire.

2. RJCIS agrees that neither MC nor MCPA shall have any obligations to RJCIS whatsoever, beyond the proper application of the aforesaid 80% public grant funds to invoices submitted for the construction of the Facility. Subject only to the obligation of MC to make proper application of the aforesaid 80% public grant funds, all activities required of MC under the TDOT Grant Agreement will be performed by RJCIS, at its sole expense, and MC will accept such performance and timely report as the public agency to TDOT as required under the TDOT Grant Agreement

3. The Project shall be performed in accordance with all latest applicable TDOT procedures, guidelines, manuals, standards, and directives as described in the most current version of TDOT's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tdot.state.tn.us/local/). Pursuant to the Grant Agreement, a full time employee of MC shall supervise the Project Phases. Said full time employee of MC shall be qualified to and shall ensure that the Project shall be performed in accordance with the terms of the Grant Agreement and all latest applicable TDOT procedures, guidelines, manuals, standards, and directives as described in TDOT's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tdot.state.tn.us/local/) and the Grant Agreement. RJCIS shall not be required to reimburse or indemnify MC for any County employee salaries or costs. As such, RJCIS desires and will complete the Grant Agreement required NEPA, Design, and ROW phases of the project under their watch care and at their cost. RJCIS assumes ultimate responsibility for these TDOT requirements listed above, and at the completion of these phases a Construction Engineering Inspection ("CEI") firm will be contracted under the supervision of the County Engineer for the Construction Phase of the project as contemplated herein generally and paragraph 9 for further

requirements of the CEI firm. RJCIS further agrees to transmit all studies, reports, plans, etc. that have been developed within these phases of the project to MC through the Montgomery County Engineer for the required review and oversight of these phases. RJCIS assumes all responsibility for any omitted steps or missing information as related to the above mentioned requirements of these phases. RJCIS agrees to defend, indemnify and hold MC harmless from any and all claims, demands, damages, fines, penalties or other charges arising from such.

4. RJCIS will act as the private enterprise to invest the private sector matching funding for the Project, and as such, will invest such funds in the Project as are required by the terms and conditions of the governing TDOT funding agreement. No funds beyond the aforesaid 80% grant public funds will be invested or required of MC or MCPA. The procedural mechanism by which MC and RJCIS shall pay their respective shares of the costs of the Project as it progresses shall be that: (1) RJCIS shall submit monthly invoices as a standard practice, and under no circumstance shall an invoice be submitted more than two (2) months from the original submittal date of the prior invoice for work completed to MC; (2) upon notification to RJCIS that such an invoice has been approved, RJCIS shall remit 20% of the face amount of that invoice to MC; and (3) upon receipt of said 20% amount, MC shall remit payment of the entire 100% of the face amount of said invoice to RJCIS. If any invoices are denied in whole or in part, MC and RJCIS shall attempt to consult and re-invoice under the funding grant for reimbursement, but after the passing of 90 days from the initial rejection in whole or in part of any invoice, RJCIS shall repay that amount denied to MC and MC shall only become liable for the return of that amount upon react of the funding grant in the Grant Agreement. Any costs needed to complete the Project, beyond the aforesaid 80% grant public funds, shall be the responsibility of RJCIS and not the responsibility of the MC or MCPA. Any potential costs that may be incurred on the project above the 80% grant public funds and 20% matching funds shall be documented and included in similar monthly invoices to those invoices that were provided for reimbursement purposes. RJCIS and MC mutually understands that all CEI services and grant requirements are for the full extents of the project, and do not stop if the grant funds are exhausted prior to the full completion of the project. If such a situation occurs, MC will attempt to notify RJCIS prior to the payment of the full grant amount such that adequate funds may be reserved for the CEI Firm if their time or efforts go beyond the originally contracted amount, and such efforts can be proven and documented. If all funds have been exhausted and paid out to RJCIS prior to the CEI Firm informing MC that additional fees will be required to finish the project, then RJCIS shall reimburse such agreed upon fees back to MC such that MC can fulfill its obligations to the CEI Firm as further stated in paragraph 9.

5. RJCIS understands and agrees that MC shall not be responsible for, or obligated to pay or contribute toward any cost of the Project, any amount beyond the aforesaid 80% public grant funds. RJCIS further agrees to indemnify MC against all claims and losses incurred by reason of RJCIS's failure to provide its 20% private funding match in the current fiscal year and all future fiscal year funding phases as specified in the Grant Agreement. RJCIS will execute jointly with MC all documents necessary to obtain and govern the acceptance and use of said funds to construct improvements to and expansions of the aforesaid single purpose barge facility to complete the Project in accordance and compliance with the terms and conditions of the governing TDOT Grant Agreement and will provide such certificates and evidence of compliance as may be required by said terms and conditions, and as required therein, in a timely

manner to MC or MCPA or TDOT. The terms, duties and obligations of the TDOT Grant Agreement and Nyrstar Lease are incorporated by reference herein.

6 MC and RJCIS agree that MC will enter into the Nyrstar Lease upon terms and conditions acceptable to RJCIS as assignee, and to simultaneously assign all rights and obligations under the same to RJCIS. RJCIS shall, for the period for reimbursement of grant funds in the event of a default set forth in the Grant Agreement, report to MC or to MCPA, as MC's designee, not less frequently than quarterly, the daily total of all revenue producing barge traffic through the Facility. The report for the fourth quarter of each year shall be cumulative and shall be certified by RJCIS's Chief Financial Officer. If other or earlier reporting is required by any demand from any other agency, then RJCIS shall meet said demand.

7. As consideration for MC assigning to RJCIS the Nyrstar Lease, RJCIS shall make payments to MCPA, as agency of MC as follows:

A. RJCIS shall pay all of MC and MCPA's actual and reasonable costs and expenses required by applicable Tennessee law and which would not have been necessary or incurred but for the existence of the Facility and MC and MCPA's participation in the funding Agreement with TDOT or this Agreement, for the time period between the execution of this Agreement, and the third anniversary of the completion of the Facility.

B. Commencing with the third anniversary of the completion of the Facility and continuing for a period not to exceed the period set forth in the Grant Agreement for reimbursement of grant funds in the event of a default, RJCIS shall deposit into a Facility Administration Account, to be administered by MC or MCPA funds sufficient to reimburse MC and MCPA all actual and reasonable cost and expenses incurred as a direct result of the Project, and made necessary by reason of the participation of said agencies therein. Such obligation shall include, but be not limited to cost to MC, MCPA of any audit of its financial activities for said year that is required by applicable Tennessee law and is attributable, in whole or in part, to the construction or existence of the Facility and MCPA's participation in this Agreement, RJCIS shall, within thirty (30) days after delivery of a true copy of the invoice for such audit, deposit into said Account an amount equal to the invoice which is directly attributable to the construction and existence of the Facility and MC and MCPA's participation in this Agreement.

C. Subject only to any contrary requirements of Section 20 of the Private Act creating MCPA, all sums paid as consideration for the assignment of the Nyrstar Lease shall be used to defray the costs of MC and MCPA's statutory and/or regulatory operational requirements. In no event shall any of said sums be used for any purpose which might be reasonably expected to lessen the total barge traffic handled by the Facility or to lessen the percentage of the total barge traffic in Montgomery County, Tennessee handled by the Facility.

8. RJCIS shall provide MC a full accounting for all expenditures of funds incurred in connection with the construction of the Facility, including periodic accountings supporting

each request for reimbursement from CMAQ or TDOT funds made available to MC for such construction.

9. The Parties agree that MC shall contract with a CEI firm to oversee the Project Construction Phase in coordination with RJCIS, at no cost or expense to MC beyond public funds supplied pursuant to the Grant Agreement. Any cost or expense of the CEI not paid by the Grant Agreement funds are borne by RJCIS. Said CEI shall be qualified to and shall ensure that the Project shall be performed in accordance with the terms of the Grant Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects. The CEI shall further ensure that the Project shall conform to or exceed all applicable specifications and requirements of agencies having regulatory jurisdiction over the aforesaid Intermodal Facility. MC agrees to consult with RJCIS with respect to the qualifications of the CEI. The Project Manager is to be identified, employed and paid by RJCIS and is tasked with the duties to complete construction on behalf of RJCIS as required herein.

10. For such period as may be required by the Grant Agreement, RJCIS will permit reasonable access to the Project area and the Facility, on notice and request for the same, to MC and its agents, as necessary to review the Project. All such access shall be subject to and in conformity with federal regulations and requirements, and all applicable requirements of the Occupational Health and Safety Administration. RJCIS agrees to defend, indemnify and hold MC harmless from any and all claims of any type, demands, damages, fines, penalties or other charges arising from such access.

11. For such period as may be required by the Grant Agreement, RJCIS will permit required access to the Project area and the Facility on any such day that construction activity is ongoing or for reasonable access to the same areas on days that construction activities are not active, on notice and request for the same, to the CEI selected and retained by MC as necessary for said CEI Manager to inspect the Intermodal Facility for the purpose of determining that the Intermodal Facility and all components of the Project are being maintained in conformity with all then applicable federal and state requirements. All such access shall be subject to and in conformity with the requirements of federal and state regulations and to all applicable requirements of the Occupational Health and Safety Administration. RJCIS agrees to defend, indemnify and hold MC harmless from any and all claims of any type, demands, damages, fines, penalties or other charges arising from such access. The CEI shall have all access required by the Grant Agreement with TDOT herein to appear, inspect and fulfill the duties of the Grant Agreement and the expense of the CEI shall be borne by RJCIS.

12. Conditioned on RJCIS obtaining all necessary governmental approvals to do the work, RJCIS and/or one or more of its affiliate entities will, directly or through subcontractors, do all work necessary to complete the Project. RJCIS agrees to perform such work in accordance with the terms and conditions of the Grant Agreement. Any inconsistencies between this Agreement and the Grant Agreement shall be determined and construed in accordance with the Grant Agreement which shall govern and control. This Agreement represents the additional legal obligations of the parties to be performed in conjunction with those in the Grant Agreement and the Lease Agreement.

13. RJCIS will, at its cost and expense, provide maintenance for the aforesaid Intermodal Facility, in compliance with the requirements of applicable federal and state regulations, and the Grant Agreement.

14. Upon completion of the Project, RJCIS will, by separate written instrument, grant MC such rights as are reasonably necessary to insure that the Facility remains available for public use for such period as may be required by the Grant Agreement. To ensure that the public interest and investment required by CMAQ funding conditions is protected, if RJCIS, or its related operating entity, discontinues or abandons the use of the Facility, or sells any item purchased under this Agreement (including, but not limited to, any property, tracks, structures, or material), then RJCIS shall notify the MC and MCPA at least thirty (30) days after taking this action and repay to the MC all proportionate share of the CMAQ funds (the "CMAQ Reimbursement") provided in this Agreement within one hundred and eighty (180) days of taking this action. In the event of a subsequent Lease of the Facility by a third party, RJCIS agrees to indemnify MC for any non-payment of the CMAQ Reimbursement such subsequent Lessee. Nothing is this Section 14 shall be deemed to preclude RJCIS from replacing any improvement on the Facility or other items purchased pursuant to this Agreement as may be reasonably prudent due to wear and tear, obsolescence, structural damage, the need to expand capacity, or similar causes, and RJCIS shall not be required to make any reimbursement under this Section 14 for trade in values, scrap sales, core exchanges, and similar funding devices used to reduce the net effective costs of such change outs, provided that the net functional capacity of the Facility is not thereby compromised. RJCIS agrees to defend, indemnify and hold MC harmless from any and all claims, demands, damages, fines, penalties or other charges arising from all such events and operations of the Facility demanded by any third party.

15. RJCIS agrees to indemnify and hold harmless, and shall fully and promptly pay, perform, discharge, and defend MC, MPCA and its affiliates, and their directors, officers, agents and employees from any and all claims, orders, demands, causes of action, proceedings, judgments, or suits and all liabilities, losses, costs or expenses (including, without limitation, technical consultant fees, court costs, expenses paid to third parties and reasonable legal fees) and damages arising out of, or as a result of the Project, save and except any and all claims and charges in any manner arising from MC's failure to properly accept and apply all or any portion of the 80% public grant funds described in this Agreement. RJCIS shall otherwise bear the full cost of obligations and requirements under the Grant Agreement, and the Nyrstar Lease. To ensure that the public interest and pubic investment protections required by CMAQ funding conditions are met; in the event of the assertion of any claim or demand for the repayment of funds, or for future maintenance lease or operation costs are made by any third party, upon Nyrstar, MC, MCPA, and/or TDOT; RJCIS, or its related operating entity, upon the assertion of such claim or demand, with or without fault on the part of RJCIS, shall notify MC and MCPA, and shall immediately repay to any of such of said parties a sum equal to that portion of the CMAQ funds (the "CMAQ Reimbursement"), which said party may be legally required to reimburse. No assignment by RJCIS of any rights or obligations under this Agreement or any related agreement shall relieve RJCIS of this obligation.

16. This Agreement shall be governed by the laws of the State of Tennessee. To the extent that federal statutes, regulations, orders or other lawful requirements address the same or substantially identical subject matter as this Agreement, compliance by RJCIS with such statutes, regulations, orders or requirements shall constitute compliance with this Agreement.

17. It is recognized by RJCIS, MC and MCPA that portions of the Facility may be subject to the jurisdiction of the Corps of Engineers, and it is agreed that compliance with the orders and regulations of the Corp of Engineers, or other regulatory agencies, shall, in no event, constitute non-compliance with this Agreement.

18. The terms and conditions of this Agreement shall remain in force and effect until ongoing compliance obligations under the CMAQ program rules expire.

19. No agency or partnership relationship between the Parties is created, or to be implied or construed from this Agreement, and RJCIS does not have the authority to act as agent for MC or MCPA as to any of its activities in carrying out its scope of work under the Grant Agreement as to third party suppliers or vendors.

20. The obligations and undertaking of RJCIS pursuant to his Agreement are specifically contingent and conditioned upon MCPA entering into the Nyrstar Lease obtaining all property rights necessary for the construction of the Facility, and the area immediately surrounding the same and necessary for the construction and expansion thereof into the Facility, as contemplated by this Agreement, on terms and conditions reasonably acceptable to RJCIS.

21. This Agreement shall be executed in duplicate, and each executed copy shall have the effect of an original for all purposes.

IN WITNESS OF WHICH the Parties have caused this Agreement to be executed, each by its duly authorized officer, effective as of the day and year first above mentioned.

MONTGOMERY COUNTY, TENNESSEE

BY: _____

TITLE: _____

R. J. CORMAN INTERMODAL SERVICES, LLC

BY: _____

TITLE: _____

MONTGOMERY COUNTY PORT AUTHORITY

BY: _____

TITLE: _____

Approved for County

_____
Special Counsel for Project

_____
Montgomery County Attorney

EXHIBIT A

GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TRANSPORATION
AND
MONTGOMERY COUNTY
AND
R.J. CORMAN RAILROAD GROUP, LLC
AND
R.J. CORMAN INTERMODAL SERVICES, LLC

This Grant Contract by and between the State of Tennessee Department of Transportation (hereinafter referred to as the "Department") and Montgomery County (hereinafter referred to as the "Agency") and R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC (hereinafter the Agency, R.J. Corman Railroad Group, LLC, and R.J. Corman Intermodal Services, LLC referred to together as the "Parties") is for the provision of a Cumberland River Waterway Intermodal Facility, as further defined in the "SCOPE OF PROJECT."

Agreement Number: 140249
Project Identification Number (PIN): 121611.00
State Project Number: 63LPLM-F3-064
Federal Project Number: CM-6300(21)
Termini: Montgomery County Port

A. SCOPE OF PROJECT:

A.1. The Agency shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Grant Contract.

A.2. The Agency shall perform the Project described in the Agency's Application (Attachment 3). The Agency's Application (Attachment 3) is incorporated to elaborate supplementary Scope of Project specifications. The Agency shall build a multipurpose intermodal facility on the Cumberland River in Montgomery County, Tennessee. The aforesaid intermodal facility shall interconnect rail, truck, and barge traffic, with the goal of reducing truck traffic and congestion by diverting freight to barge and rail.

A.3. R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC are signatories to this Grant Contract in order to agree with its conditions. R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC agree that the Department shall have no obligation to R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC whatsoever.

A.4. The Parties shall submit quarterly progress reports during construction of the port and purchase and installation of loading and unloading equipment. The reports shall be filed by the Parties for the previous quarter in conjunction with the last invoice for that period. After port operation begins, the Parties shall submit annual reports by the end of January for the previous calendar year. These reports shall provide the freight volumes by transportation mode (barge, rail and truck) that are handled by the port. The annual reports shall also include estimates of the number and length of the truck trips avoided by diverting freight to barge or rail. This information shall be necessary to generate estimates of the emission reductions associated with the project. The Parties may designate one or more of the three entities to submit these aforesaid reports.

A.5. The Project shall be accomplished in the following manner, all of which subparagraphs a. through e. below shall be referred to as "Project Phases":

a. NEPA/Environmental Clearance: The Parties shall be responsible; funding shall be provided by the Parties (the "NEPA Phase");

b. Design/Preliminary Engineering: The Parties shall be responsible; funding shall be provided by the Parties (the "Design Phase");

c. Right-of-Way: The Parties shall be responsible; funding shall be provided by the Parties (the "ROW Phase");

d. Construction: The Parties shall be responsible; funding shall be provided by the Department and Parties (the "Construction Phase").

e. After receiving authorization for a Project Phase, the Agency shall commence and complete the Project Phases as assigned above of the Project with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws, provided however, that the Department agrees and acknowledges that the Construction Phase of the Project will not start until final approval of all Future Funding Phases (as defined in Section C.1 below), and such delay until final authorization of all Future Funding Phases will not be considered a default or violation of the first sentence above or any requirement below. The Project shall be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically). A full time employee of the Agency shall supervise the Project Phases. Said full time employee of the Agency shall be qualified to and shall ensure that the Project shall be performed in accordance with the terms of this Grant Contract and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically) and this Grant Contract.

A.6. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Agency's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.

a. this Grant Contract document;

b. the Grant Budget (Attachment 1);

c. the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically);

d. FHWA-1273 (Attachment 2);

e. the most current Federal Highway Administration (FHWA) Congestion Mitigation and Air Quality Improvement (CMAQ) Program Guidance (located at http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/ as updated periodically);

f. the Agency's Grant Application maintained by the Department incorporated by reference to elaborate supplementary Scope of Project specifications.

B. CONTRACT PERIOD:

This Grant Contract shall be effective for the period beginning the date the Department has signed it (as indicated by the date stated next to the Department's signature) and ending on September 1, 2019. The Agency hereby acknowledges and affirms that the Department shall have no obligation for Agency services or expenditures that were not completed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the Department under this Grant Contract exceed One Million Dollars ($1,000,000). The Grant Budget, attached and incorporated hereto as Attachment 1, Grant Contract amount shall constitute the maximum amount due the Agency for all service and Agency obligations hereunder. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Agency.

The Parties understand and agree that the Parties shall provide a twenty percent (20%) match. The Parties understand and agree that any costs needed to complete the Project not reflected in this Grant Contract shall be the responsibility of the Parties and not the responsibility of the Department.

The Department intends, but does not guarantee, to provide additional funding support for the Project in the amount of Two Million Dollars ($2,000,000) with a required minimum twenty percent (20%) Parties participation/match in Fiscal Year 2015-2016 (the "2015 Funding Phase") and Three Million Dollars ($3,000,000) with a required minimum twenty percent (20%) Parties participation/match in Fiscal Year 2016-2017 (the "2016 Funding Phase") (both of which are referred to herein as the "Future Funding Phases"). These possible subsequent grant funds would only be awarded, if applicable, by a written amendment to this Grant Contract signed by all Parties hereto as provided in Section D.2 below.

The Department acknowledges and agrees, that the Parties represent that the Project cannot be completed, nor can the intermodal facility become operational, without the Future Funding Phases as set forth above. Notwithstanding any other provision to the contrary as set forth in this Grant Contract, the Department hereby agrees and acknowledges that the Construction Phase will not start until the remaining Five Million Dollars ($5,000,000) in Future Funding is awarded as provided in Section D.2 below.

C.2. Compensation Firm. The maximum liability of the Department is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Agency shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in Section C.1. Upon progress toward the completion of the work, as described in Section A of this Grant Contract, the Agency shall submit invoices prior to any reimbursement of allowable costs.

C.4. Travel Compensation. The Agency shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Agency shall invoice the Department no more often than monthly, with all necessary supporting documentation, and present such to:

lpd.invoices@tn.gov

a. The Agency shall submit invoices, in a form outlined in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically) with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this Grant Contract to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

b. The Agency understands and agrees to all of the following.

(1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
(2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
(3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the Department is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.5.

C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. Reimbursable expenditures may NOT vary from the Grant Budget line-item amount(s) detailed.

C.7. Indirect Cost. Should the Agency request reimbursement for indirect cost, the Agency must submit to the Department a copy of the indirect cost rate approved by the cognizant federal agency and the Department. The Agency will be reimbursed for indirect cost in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Agency makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the contract period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and the Department. If the indirect cost rate is provisional during the period of this Grant Contract, once the rate becomes final, the Agency agrees to remit any overpayment of funds to the Department, and subject to the availability of funds the Department agrees to remit any underpayment to the Agency.

C.8. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the contract period.

C.9. Payment of Invoice. A payment by the Department shall not prejudice the Department's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the Department shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.

C.10. Final Invoices. The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.11. Unallowable Costs. Any amounts payable to the Agency shall be subject to reduction for amounts included in any invoice or payment theretofore made, which are determined by the Department, on the basis of audits or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable costs.

C.12. Right to Set Off. The Department reserves the right to set off or deduct from amounts that are or shall become due and payable to the Agency under this Grant Contract or under any other agreement between the Agency and the Department or State of Tennessee under which the Agency has a right to receive payment from the Department or State of Tennessee.

C.13. Prerequisite Documentation. The Agency shall not invoice the Department under this Grant Contract until the Department has received the following documentation properly completed.

a. The Agency shall complete, sign, and return to the Department an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the Department. The Department will pay via ACH Credits.

b. The Agency shall complete, sign, and return to the Department a "Substitute W-9 Form" provided by the Department. The Agency taxpayer identification number must agree with the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract or the Agency's Tennessee Edison Registration.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The Department is not bound by this Grant Contract until it is signed by the Parties and the Department.

D.2. Modification and Amendment. Except as specifically provided herein, this Grant Contract may be modified only by a written amendment signed by all Parties and Department.

D.3. Termination for Convenience. The Department may terminate this Grant Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the Department. The Department shall give the Parties at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered nor performed in accordance with the requirements of this Grant Contract. The final decision as to the amount, for which the Department is liable, shall be determined by the Department. Should the Department exercise this provision, the Parties shall not have any right to any actual general,

special, incidental, consequential, or any other damages whatsoever of any description or amount, except as set forth above. In no event shall the Department's exercise of its right to terminate this Grant Contract for convenience relieve the Parties of any liability to the Department for any damages or claims arising under this Grant Contract. All provisions that logically ought to survive termination of this Grant Contract shall survive, including but not limited to, "Governing Law," "Right to Set Off," "Records," "Monitoring," "Audit Report," "State Liability," "State and Federal Compliance," "Cumulative Rights" (as identified by the section headings).

D.4. Termination for Cause. If the Parties fail to properly perform its obligations under this Grant Contract in a timely or proper manner, or if the Parties violates any terms of this Grant Contract, the Department shall have the right to immediately terminate the Grant Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Parties shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Grant Contract by the Parties and the Department may seek other remedies allowed at law or in equity for breach of this Grant Contract. All provisions that logically ought to survive termination of this Grant Contract shall survive, including but not limited to, "Governing Law," "Right to Set Off," "Records," "Monitoring," "Audit Report," "State Liability," "State and Federal Compliance," "Cumulative Rights" (as identified by the section headings).

D.5. Subject to Funds Availability. The Grant Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Grant Contract upon written notice to the Parties. Said termination shall not be deemed a breach of contract by the Department. Upon receipt of the written notice, the Parties shall cease all work associated with the Grant Contract. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Parties shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount, except as set forth above. All provisions that logically ought to survive termination of this Grant Contract shall survive, including but not limited to, "Governing Law," "Right to Set Off," "Records," "Monitoring," "Audit Report," "State Liability," "State and Federal Compliance," "Cumulative Rights" (as identified by the section headings).

D.6. Subcontracting. The Parties shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the Department. If such subcontracts are approved by the Department, each shall contain, at a minimum, sections of this Grant Contract pertaining to "Conflicts of Interest," "Nondiscrimination," "Public Accountability," "Public Notice," "Records," "Monitoring," "State and Federal Compliance," "Lobbying," "Debarment and Suspension," "Title VI," "Buy America" and "Governing Law" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Parties acknowledge and agree that the Parties shall be responsible for all work performed.

D.7. Conflicts of Interest. The Parties warrants that no part of the total Grant Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Parties in connection with any work contemplated or performed relative to this Grant Contract.

D.8. Nondiscrimination. The Parties hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Grant Contract or in the employment practices of the Parties on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Parties

shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.9. Public Accountability. If the Parties are subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4, or if this Grant Contract involves the provision of services to citizens by the Parties on behalf of the State, the Parties agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Agency shall display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

D.10. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Parties that pertain to this Grant Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Parties shall be approved by the Department.

D.11. Licensure. The Parties and their employees and all contractors and subcontractors shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

D.12. Records. The Parties (and any approved contractors and subcontractors) shall maintain documentation for all charges under this Grant Contract. The books, records, and documents of the Parties (and any approved subcontractor), insofar as they relate to work performed or money received under this Grant Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the Department, the Comptroller of the Treasury, the Federal Highway Administration (FHWA), or representatives duly appointed by the Department.

The records of the Agency shall be maintained in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification, Public Company Accounting Oversight Board (PCAOB) Accounting Standards Codification or Governmental Accounting Standards Board (GASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

The records of R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC shall be maintained in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification, Public Company Accounting Oversight Board (PCAOB) Accounting Standards Codification, or Governmental Accounting Standards Board (GASB) Accounting Standards Codification, as applicable, and any related AICPA Industry Audit and Accounting guides.

In addition, documentation of grant applications, budgets, reports, awards, and expenditures will be maintained in accordance with U.S. Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Parties shall also comply with any recordkeeping and reporting requirements prescribed by the Tennessee Comptroller of the Treasury.

The Parties shall establish a system of internal controls that utilize the COSO Internal Control - Integrated Framework model as the basic foundation for the internal control system. The Parties shall incorporate any additional Comptroller of the Treasury directives into their internal control system.

Any other required records or reports which are not contemplated in the above standards shall follow the format designated by the Department.

D.13. Prevailing Wage Rates. All grants and contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State of Tennessee require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.* and the Parties shall comply as applicable. Additionally, the Parties shall comply with any requirements of the federal prevailing wage rates as detailed in Form FHWA-1273 (Attachment 2). The Parties shall pay the greater of the aforesaid federal or state wage rates. Copies of the aforesaid rates may be received from the Department upon request.

D.14. Monitoring. The Parties' activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the Department, the Comptroller of the Treasury, or their duly appointed representatives.

D.15. Progress Reports. The Parties shall submit brief, periodic, progress reports to the Department as requested.

D.16. Annual and Final Reports. The Agency shall submit, within three (3) months of the conclusion of each year of the Term, an annual report. For grant contracts with a term of less than one (1) year, the Agency shall submit a final report within three (3) months of the conclusion of the Term. For grant contracts with multiyear terms, the final report will take the place of the annual report for the final year of the Term. The Agency shall submit annual and final reports to the Department. At minimum, annual and final reports shall include: (a) the Agency's name; (b) the Grant Contract's identification number, Term, and total amount; (c) a narrative section that describes the program's goals, outcomes, successes and setbacks, whether the Agency used benchmarks or indicators to determine progress, and whether any proposed activities were not completed; and (d) other relevant details requested by the Department. Annual and final report documents to be completed by the Agency shall appear on the Department's website or as an attachment to the Grant Contract.

D.17. Audit Report. When the Agency has received seven hundred fifty thousand dollars ($750,000.00) or more in aggregate federal and state funding for all of its programs within the Agency's fiscal year, the Agency shall provide audited financial statements to the Tennessee Comptroller of the Treasury. The Agency may, with the prior approval of the Comptroller of the Treasury, engage a licensed independent public accountant to perform the audit. The audit contract between the Agency and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. When an audit is required under this Section, the audit shall be performed in accordance with U.S. Office of Management and Budget's Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards.

The Agency shall be responsible for reimbursing the Tennessee Comptroller of the Treasury for any costs of an audit prepared by the Tennessee Comptroller of the Treasury.

The Agency shall be responsible for payment of fees for an audit prepared by a licensed independent public accountant. Payment of the audit fees for the licensed independent public accountant by the Grantee shall be subject to the provision relating to such fees contained within this Grant Contract. Copies of such audit reports shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, the Central Procurement Office, and the Commissioner of Finance and Administration.

Audit reports shall be made available to the public.

D.18. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Agency shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for such decision and non-competitive procurement. Further, and notwithstanding the foregoing, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Agency's compliance with applicable federal procurement requirements.

D.19. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Grant Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed in accordance with Section D.2.

D.20. Independent Contractor. The Parties and Department, in the performance of this Grant Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the Parties and Department that all are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Notwithstanding the above, the Department acknowledges and accepts the representation made that R.J Corman Intermodal Services Company, LLC is a wholly owned subsidiary of R.J. Corman Railroad Group, LLC.

D.21. State Liability. The Department shall have no liability except as specifically provided in this Grant Contract.

D.22. Force Majeure. The obligations of the Department and Parties are subject to prevention by causes beyond the Department's and Parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.23. State and Federal Compliance. The Parties shall comply with all applicable State of Tennessee and federal laws and regulations in the performance of this Grant Contract. Particularly, the Parties shall be familiar with and comply with, but not limited to, 23 C.F.R., 49 C.F.R., 2 C.F.R., CFDA Number 20.205, and the requirements referenced in this Grant Contract. Notwithstanding any other provision, failure of the Parties to comply with this provision shall constitute a material breach of this Grant Contract and subject the Parties to the repayment of all funds expended or expenses incurred under this Grant Contract; and, if the FHWA determines that some or all of the federal funds expended under this Grant Contract are ineligible for federal participation because of a failure by the Parties to adhere to this Section, then the Parties shall repay the Department any said funds as required by FHWA.

D.24. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Parties agree that they will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Parties acknowledge and agree that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.25. Completeness. This Grant Contract is complete and contains the entire understanding between the Parties and Department relating to the subject matter contained herein, including all the terms and conditions agreed to by the Parties and Department. This Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties and Department relating hereto, whether written or oral.

D.26. Severability. If any terms and conditions of this Grant Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Grant Contract are declared severable.

D.27. Lobbying. Each of the Parties certifies, to the best of its knowledge and belief, that:

a. No federally 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 an 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 federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Parties shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying,'' in accordance with its instructions.

c. The Parties shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

D.28. Debarment and Suspension. Each of the Parties certify, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

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

b. have not within a three (3) year period preceding this Grant Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Grant Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

Each of the Parties shall provide immediate written notice to the Department if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

D.29. Tennessee Department of Revenue Registration. The Parties shall be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material provision of this Grant Contract.

D.30. Department Right-of-Way. Nothing in this Grant Contract shall be construed to limit the Department's right to enter upon its highway right-of-way at any time.

D.31. Maintenance. The Parties shall be responsible for the maintenance of the Project. As an example, if the project funded hereunder results in the installation of any equipment, including but not limited to, traffic signals, lighting, electronically operated devices, solar-powered devices, then the Parties shall be responsible for and pay all costs associated with the maintenance and operation of the aforesaid equipment.

D.32. Traffic Control. The Parties shall comply with and provide traffic control in accordance with the requirements of the current Manual on Uniform Traffic Control Devices. If proper compliance and traffic control is not in place, the Department may order the Parties to stop work until proper compliance and traffic control is put in place.

D.33. Environmental Requirements. In the performance of this Grant Contract, the Parties shall comply with all applicable environmental regulations and procedures, including but not limited to, the environmental procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically) incorporated in Section A above. The aforesaid environmental procedures shall include, but not be limited to, complying with the Department's Tennessee Environmental Procedures Manual and Tennessee Environmental Streamlining Agreement, obtaining permits detailed in the Statewide Storm Water Management Plan, performing erosion control plans, performing an Erosion Control Conference when needed, and obtaining applicable permits. The Parties shall be solely responsible for compliance with all applicable environmental regulations and for any liability arising from noncompliance with the aforesaid regulations and the Parties shall reimburse the Department for any loss incurred for noncompliance to the extent permitted by Tennessee law.

D.34. Plans and Specifications. In the performance of this Grant Contract, the Parties shall comply with all Department Design Policies and Procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically) incorporated in Section A above. The Agency shall submit to the Department for approval all plans and specifications as detailed in the aforesaid Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects.

D.35. Right-of-Way. In the performance of this Grant Contract, the Parties shall comply with all right-of-way procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically) incorporated in Section A above. The aforesaid right-of-way procedures shall include, but not be limited to, complying with applicable state laws, the Uniform Relocation Assistance and Real

Property Acquisition Policies Act of 1970 Title - 42 U.S.C. §§ 4601, et seq., 49 C.F.R. Part 24, and the Department's Right-of-Way Procedures Manual.

D.36. Utilities. In the performance of this Grant Contract, the Parties shall comply with all utility procedures detailed in the most current version of the Department's Local Government Guidelines for the Management of Federal and State Funded Transportation Projects (located at http://www.tn.gov/tdot/article/tdot-local-programs-development-office as updated periodically) incorporated in Section A above. The Parties shall provide for and accomplish all applicable utility connections within the right-of-way and easements prior to the construction of the project.

D. 37. Approval of the Construction Phase. The Agency shall not execute a contract for the Construction Phase of the Project without the prior written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.

If the Project includes State Highway Right-of-Way, the Agency shall follow all requirements imposed by the Department Traffic Engineer.

In the event that the Project includes State Highway Right-of-Way, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

D.38. Title VI. The Parties shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Parties shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.39. Americans with Disabilities Act. The Parties shall comply with all the requirements as imposed by the Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq. and the regulations of the federal government issued thereunder.

D.40. Insurance. The Agency, being a Tennessee governmental entity, are governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort.

R.J. Corman Railroad Group, LLC, and R.J. Corman Intermodal Services, LLC shall carry adequate liability and other appropriate forms of insurance.

a. R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC shall maintain, at minimum, the following insurance coverage:

(1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars ($1,000,000) per occurrence for employers' liability whichever is greater.

(2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate.

(3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars ($1,000,000) per occurrence. .

b. R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC shall ensure that any subcontractor providing engineering or other similar professional services shall maintain Professional Malpractice Liability with a limit of not less than one million dollars ($1,000,000) per claim and two million dollars ($2,000,000) aggregate.

c. At any time the Department may require R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Grant Contract, provided, however that R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC may elect to retain self-insurance of a portion of the aforesaid coverage not to exceed five hundred thousand dollars ($500,000.00) per occurrence so long as R.J. Corman Railroad Group, LLC and R.J. Corman Intermodal Services, LLC are responsible for any losses or liabilities which would have been assumed by the insurance company or companies which would have issued such policy..

D.41. Federal Funding Accountability and Transparency Act (FFATA).

This Grant Contract requires the Parties to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Parties are responsible for ensuring that all applicable FFATA requirements, including but not limited to those below, are met and that the Parties provide information to the Department as required.

The Parties shall comply with the following:

a. Reporting of Total Compensation of the Parties' Executives.

(1) The Parties separately shall report the names and total compensation of each of its five most highly compensated executives for the Parties' preceding completed fiscal year, if in the Parties' preceding fiscal year it received:

i. 80 percent or more of the Parties' annual gross revenues from Federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and sub awards); and

ii. $25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and sub awards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or § 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S.

Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

(2) Total compensation means the cash and noncash dollar value earned by the executive during the Parties' preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)):

i. Salary and bonus.
ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
v. Above-market earnings on deferred compensation which is not tax qualified.
vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

b. The Parties must separately report executive total compensation described above to the Department by the end of the month during which this Grant Contract is established.

c. If this Grant Contract is amended to extend its term, the Parties must submit an executive total compensation report to the Department by the end of the month in which the amendment to this Grant Contract becomes effective.

d. The Parties shall separately obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Grant Contract. More information about obtaining a DUNS Number can be found at: http://fedgov.dnb.com/webform/.

D.42. Sale or Service Discontinuance. To ensure the public interest and investment is protected, if the Parties discontinue service funded by this Grant Contract, abandon the facility funded by this Grant Contract, sell the facility funded by this Grant Contract, or sell any item purchased under this Grant Contract (including, but not limited to, any property, track, structures, or material), then the Parties shall notify the Department at least thirty (30) days after taking any such action and repay to the Department a proportionate share of the Grant Contract funds provided in this Grant Contract within one hundred and eighty (180) days of taking this action.

The aforesaid proportionate share of Grant Contract funds to be repaid shall be calculated in the following manner:

a. if the discontinuance, abandonment, or sale occurs within the contract period in Section B or within one (1) year after the ending effective date in Section B, then the Parties shall repay to the Department one hundred percent (100%) of the Grant Contract funds expended by the Department under this Grant Contract;

b. thereafter, the repayment obligation set above shall be reduced by five percent (5%) for every year after the ending effective date in Section B. By way of example, if the discontinuance, abandonment, or sale occurs within year three (3) after the ending effective date in Section B, then the Parties shall repay eighty five percent (85%) of the Grant Contract funds expended by the Department under this Grant Contract.

The Department may lower the aforesaid calculation if the Department determines that the Parties have taken action to ensure the public interest and investment is protected. Such action to ensure the public interest and investment is protected may include, but not be limited to, the Parties promptly reestablishing service or selling but ensuring that service is continued and the obligations to the Department are transferred to the new owner(s). This determination to lower the aforesaid calculation is within the sole and absolute discretion of the Department.

D.43. Buy America. In the performance of this Grant Contract, the Parties shall comply with all applicable Buy America requirements, including but not limited to, the Buy America requirements detailed in 23 C.F.R. 635.410.

D.44. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or email address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Department:

Whitney Sullivan
Manager, Local Programs Office
Tennessee Department of Transportation
505 Deaderick Street
Nashville, TN 37243
whitney.sullivan@tn.gov
615-253-1387

The Agency:

Nicholas B Powell
Montgomery County Engineer
Montgomery County Government
1 Millennium Plaza, Suite 102
Clarksville, TN 37040
nbpowell@mcgtn.net
931-553-5113

R.J. Corman Railroad Group, LLC:

Fred Mudge
Chairman of the Board
101 RJ Corman Drive
Nicholasville, KY 40340
fred.mudge@rjcorman.com
859-885-7521

R.J. Corman Intermodal Services, LLC:

Greg Deakle
Director of Port & Waterway Intermodal Operations
101 RJ Corman Drive
Nicholasville, KY 40340
greg.deakle@rjcorman.com
859-469-2291

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

D.45. Headings. Section headings are for reference purposes only and shall not be construed as part of this Grant Contract.

IN WITNESS WHEREOF,

MONTGOMERY COUNTY:

JIM DURRETT, MAYOR **DATE**

APPROVED AS TO FORM AND LEGALITY

MONTGOMERY COUNTY ATTORNEY **DATE**

R.J. CORMAN RAILROAD GROUP, LLC:

FRED MUDGE, CHAIRMAN OF THE BOARD DATE

R.J. CORMAN INTERMODAL SERVICES, LLC:

GREG DEAKLE, DIRECTOR PORT & WATERWAY INTERMODAL OPERATIONS DATE

STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION:

JOHN SCHROER, COMMISSIONER DATE

APPROVED AS TO FORM AND LEGALITY

JOHN REINBOLD, GENERAL COUNSEL DATE

ATTACHMENT 1

GRANT BUDGET

Agreement Number: 140249
Project Identification Number (PIN): 121611.00
State Project Number: 63LPLM-F3-064
Federal Project Number: CM-6300(21)
Termini: Montgomery County Port

PHASE	GRANT CONTRACT	PARTIES PARTICIPATION	TOTAL PROJECT
NEPA	0.00	0.00	0.00
DESIGN	0.00	0.00	0.00
RIGHT OF WAY	0.00	0.00	0.00
CONSTRUCTION	$1,000,000.00	$250,000.00*	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
	0.00	0.00	0.00
GRAND TOTAL	**$1,000,000.00**	**$250,000.00**	**$1,250,000.00**

* A Match Requirement is detailed by this Grant Budget, and the maximum total amount reimbursable by the Department pursuant to this Grant Contract, as detailed by the "Grant Contract" column above, shall be reduced by the amount of any Parties failure to meet the Match Requirement.

ATTACHMENT 2

FORM FHWA-1273
REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The Parties 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).

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.

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). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Parties may reference Form FHWA-1273 in bid proposal or request for proposal 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).

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 Parties' own organization and with the assistance of workers under the Parties' immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

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 Grant Contract, suspension / debarment or any other action determined to be appropriate by the Department and FHWA.

4. Selection of Labor: During the performance of this Grant Contract, the Parties 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. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 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 Parties and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The Parties 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 60, and 29 CFR 1625-1627. The Department and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, 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 230, 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 (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 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 Parties' project activities under this Grant Contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Grant Contract. In the execution of this Grant Contract, the Parties agree to comply with the following minimum specific requirement activities of EEO:

a. The Parties will work with the Department 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 Grant Contract.

b. The Parties will accept as their operating policy the following statement:

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

2. EEO Officer: The Parties will designate and make known to the Department 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 Parties' staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Parties' 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 Parties' EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Parties' 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 Parties' procedures for locating and hiring minorities and women.

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

e. The Parties' 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 Parties 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 Parties 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 Parties 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 Parties have a valid bargaining agreement providing for exclusive hiring all referrals, the Parties are expected to observe the provisions of that agreement to the extent that the system meets the Parties' compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Parties to do the same, such implementation violates Federal nondiscrimination provisions.

c. The Parties 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, national origin, age or disability. The following procedures shall be followed:

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

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

c. The Parties will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Parties 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 Parties will promptly investigate all complaints of alleged discrimination made to the Parties in connection with its obligations under this Grant 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 Parties will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The Parties 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 Parties' work force requirements and as permissible under Federal and State regulations, the Parties 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 Grant 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 Parties will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The Parties 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 Parties rely in whole or in part upon unions as a source of employees, the Parties will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Parties, either directly or through a Parties' association acting as agent, will include the procedures set forth below:

a. The Parties 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 Parties 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, national origin, age or disability.

c. The Parties are 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 Parties, the Parties shall so certify to the Department and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the Parties 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, 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 Parties from the requirements of this paragraph. In the event the union referral practice prevents the Parties from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Parties shall immediately notify the Department.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The Parties must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. 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 Parties shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of contractors and subcontractors, including procurement of materials and leases of equipment. The Parties shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this Grant Contract.

a. The Parties shall notify all potential contractors and subcontractors and suppliers and lessors of their EEO obligations under this Grant Contract.

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

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the Department's U.S. DOT-approved DBE program are incorporated by reference.

b. The Parties shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Grant Contract. The Parties shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Parties 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 Department deems appropriate.

11. Records and Reports: The Parties 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 Agency for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the Department and the FHWA.

a. The records kept by the Parties 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 Parties will submit an annual report to the Department 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 Grant 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 Parties 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 $10,000 or more.

The Parties must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The Parties 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 Parties' 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 Parties 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). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

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

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of 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 Parties and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. 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 shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). 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 classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall 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 shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore 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 utilized 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) 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 shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. 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.

(3) 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 shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour 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.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall 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.

c. 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 shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. 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, 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.

2. Withholding

The Department shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Parties under this Grant Contract, or any other Federal contract with the same Parties, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Party, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the Grant Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Grant Contract, the Department may, after written notice to the Parties, 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.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, 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 section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) 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 section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall 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. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

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

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

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the Agency, the Department, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the Agency or the Department, 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 may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

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

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate 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 the registered program shall be paid not less than the applicable wage rate on the wage

determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

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

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

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

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

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

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

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

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

5. Compliance with Copeland Act requirements. The Parties shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Grant Contract.

6. Subcontracts. The Parties, contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 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 Grant 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 Grant Contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Grant Contract shall not be subject to the general disputes clause of this Grant 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 Department, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this Grant Contract, the Parties certify that neither it (nor he or she) nor any person or firm who has an interest in the Parties' firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this Grant Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

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 watchmen 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 (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 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.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the Department shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The Parties, contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

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

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 Department. 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" 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:

(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.

2. 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. 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.

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

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 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.

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 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).

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 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 1, 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

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

By submission of this bid/proposal or the execution of this Grant Contract, or subcontract, as appropriate, the Parties, bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this Grant Contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the Parties agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

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.

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.

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 Department may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the Department 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.

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 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee 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 grantee or subgrantee 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.

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.

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. 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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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 may terminate this transaction for cause or default.

* * * * *

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) 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;

(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; 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.

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

2. 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)

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

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

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

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 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 grantee or subgrantee 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 grantee or subgrantee 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.

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.

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 Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

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.

* * * * *

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

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

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

* * * * *

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 20).

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

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

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

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

3. The prospective participant also agrees by submitting 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.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

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.

EXHIBIT B

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), made and entered into as of the date of the last party to execute this Lease (the "Effective Date") by and among Nyrstar Clarksville Inc., a Maryland corporation ("Nyrstar"), R. J. Corman Railroad Switching Company, LLC, a Kentucky limited liability company ("RJCS") and the Montgomery County Port Authority, an entity created under the laws of Tennessee ("MCPA") (collectively, the "Parties").

RECITALS:

The Parties recite and declare:

a. Nyrstar owns certain real property, and the improvements thereon, presently used as a single purpose barge facility at mile marker 122 on the Cumberland River, and certain real property adjacent to and surrounding the same, in Montgomery County, Tennessee, more particularly described on Exhibit A hereto (collectively, the "Property").

b. The Parties hereto mutually desire that Nyrstar lease to MCPA and that MCPA lease from Nyrstar that certain area of the Property identified as the "Lease Area" on the survey attached hereto as Exhibit B (the "Survey"),

c. The Lease Area is approximately ___ acres of undeveloped land on which RJCS will construct a multi-modal, multi-commodity, transloading and storage/distribution facility (the "Intermodal Facility"). The Intermodal Facility will be constructed immediately river north from and/or adjacent to the Existing Barge Facility (as defined in Recital f below).

d. Simultaneously with the execution of this Lease, Nyrstar has entered into a Grant of Easement Agreement (the "Railroad Easement Agreement") with R. J. Corman Railroad Company/Memphis Line, an affiliate of RJCS, granting certain easements rights to R. J. Corman Railroad Company/Memphis Line to operate, either through itself or affiliated entities, a rail line spur to the Intermodal Facility.

e. The Parties have agreed that upon the Commencement Date (as defined below in Section 1(b)), MCPA shall assign this Lease to RJCS, and RJCS shall assume the obligations of MCPA under this Lease. MCPA and RJCS shall hereinafter be referred to individually by name, or as "Lessee", as the timing of their respective rights under this Lease dictates.

f. Simultaneously with the execution of this Lease, Nyrstar and RJCS entered into a "Barge Services Agreement", whereby RJCS will assume offloading operations from Nyrstar at an existing and operating barge load-out facility (the "Existing Barge Facility") used by Nyrstar to offload zinc ore from barges to be used by Nyrstar in its smelting process.

g. The Parties hereto mutually desire that RJCS join in this Lease for the purpose of acknowledging its assumption of the rights and obligations of MCPA, as assignee of this Lease, and RJCS is willing to do so, also on the terms and conditions described below.

NOW THEREFORE, in consideration of the covenants, stipulations, terms, conditions and provisions recited herein, it is hereby agreed by and among the Parties as follows:

1. LEASE, INITIAL AND RENEWAL TERMS.

a. Nyrstar hereby demises and leases exclusively unto Lessee, and Lessee hereby rents from Nyrstar, the Lease Area. Beginning on the Effective Date, Nyrstar also hereby grants to Lessee access to (i) that certain road labeled on the Survey as "Barge Road" to provide Lessee access to and from the Lease Area and (ii) that certain path on the roadways of Lessee's main plant facility labeled on the Survey as "Access Road" to provide Lessee access to the Barge Road. Lessee hereby assumes all costs related to the maintenance and repair of the Barge Road, and to the extent the Access Road is under repair or Lessee cannot otherwise access the Access Road, Nyrstar will provide Lessee with an alternative route providing access to the Barge Road.

b. The initial term of this Lease for the Lease Area shall commence at 12:01 am, prevailing local time on the day following "substantial completion" of the Intermodal Facility, as defined in Section 37(b) below (the "Commencement Date"), and shall end, unless terminated earlier in accordance with other provisions set out herein, at midnight prevailing local time, on the day immediately preceding the twentieth anniversary of the Commencement Date (the "Initial Term"), provided Lessee shall be subject to all terms of this Lease upon the Effective Date, excluding the obligation to pay the rent set forth in Section 3 below. After the Commencement Date has been determined, the Parties hereto shall execute and deliver to each other the Commencement-Assignment Letter in the form set forth on Exhibit C attached hereto. The Parties agree and acknowledge that the delivery of the Commencement-Assignment Letter shall effectuate the assignment of this Lease to RJCS, who will thereupon assume all rights and obligations as Lessee under this Lease. The "Lease Term" refers to the Initial Term, as may be extended or renewed upon the mutual agreement of Nyrstar and Lessee. The "Lease Term" refers to the Initial Term, as may be extended or renewed pursuant to the terms of this Section, or upon the mutual agreement of Nyrstar and Lessee.

2. ALLOCATIONS OF COSTS AND CHARGES. This shall be an absolute net lease and Lessee covenants and agrees to pay, or cause to be paid, in addition to the percentage rent described in Section 3 below, all costs of occupying, operating and maintaining the Lease Area, as more particularly set out in Section 8 and Section 11 hereinbelow.

3. RENT. Except as expressly provided otherwise in this Lease, the accrual of rent and charges hereunder shall begin with the Commencement Date. Not less frequently than quarterly, throughout the Lease Term, Lessee will pay, or cause to be paid, to Nyrstar, as percentage rent, an amount equal to five percent (5%) of the gross revenues from Lessee's operations of the Intermodal Facility, but excluding all amounts paid by Nyrstar to Lessee for Lessee's provision of offloading services only at the Existing Barge Facility. Lessee will provide, or cause to be provided, to Nyrstar contemporaneously with each rent payment a reasonably detailed written report, including accounting records, indicating how the rent amount was determined. Lessee hereby acknowledges that the late payment of rent or any other amounts due hereunder will cause Nyrstar to incur costs not contemplated under this Lease, the exact amount of which would be difficult to ascertain. Accordingly, in the event that any amount due from Lessee under this Lease is not paid within five (5) business days after the date on which it is due, Lessee shall pay to Nyrstar, on demand, as additional rent, a late charge equal to three

percent (3%) of the amount so due. Nyrstar may accept any partial payment of rent or any other amount due hereunder without prejudice to any of Nyrstar's rights or remedies under this Lease.

4. NON-MONETARY CONSIDERATIONS. Lessee recognizes and acknowledges that a substantial inducement for Nyrstar to enter into this Lease is the construction and operation of the Intermodal Facility in such manner as will provide Nyrstar with commercially reasonable assurance that Nyrstar will have zinc ore and other materials loaded to and offloaded from barges to Nyrstar's plant located on the Property at such times and in such manner as will enable the uninterrupted and optimum operation of said plant; and this Lease, and the various provisions herein, shall be so construed.

5. BOOKS, RECORDS, AUDITING. Lessee shall maintain, or cause to be maintained, all records upon which each calculation of rent set forth in Section 3 above is based for a period of three (3) years following payment to Nyrstar. At any time during such three (3) year period, Nyrstar, or its authorized representatives, shall have the right to audit said records to determine the sufficiency of any such rent payment; provided, however, that Nyrstar shall neither disclose any information obtained through any such audit to any third party (except for Nyrstar's accounting, legal or other representatives providing Nyrstar advice concerning the audit), nor use any such information for any purpose whatsoever other than determining the sufficiency of rent payments made hereunder. In the event any audit from an independent third party auditor reveals any underpayment of rent to Nyrstar, then Lessee shall pay, or caused to be paid, such underpayment and the reasonable costs of the audit within thirty (30) days of Lessee's receipt of the audit, the failure of which shall be a default under this Lease.

6. TITLE, SUBORDINATION AND ESTOPPEL OBLIGATIONS.

a. Nyrstar makes the following representations and warranties: (i) Nyrstar has the right, power and authority to enter into and perform this Lease; (ii) no other leases of the Lease Area are in effect and (iii) as of the Commencement Date Nyrstar shall have good and marketable fee simple title to the entire Lease Area. Nyrstar further covenants that Lessee, on paying the rent when due as above stipulated and performing the other covenants and conditions of this Lease, shall have, hold and quietly enjoy the Lease Area, free from disturbance or hindrance by Nyrstar or any person or persons claiming through Nyrstar.

b. Nyrstar acknowledges that as of the date of this Lease, there are no mortgages or deeds of trust (herein a "mortgage") presently encumbering the Property. Nyrstar shall have the right to subordinate this Lease to any mortgage or deed of trust hereafter placed upon the Property by so declaring in such mortgage, and the recording of any such mortgage shall make it prior and superior to this Lease regardless of the date of execution or recording of either document, provided that the holder of such mortgage or encumbrance, Nyrstar and Lessee enter into an agreement on such holder's standard form providing that (i) so long as Lessee is not in default of this Lease, Lessee's occupancy of the Lease Area shall not be disturbed by said holder or anyone claiming under the holder and (ii) any subsequent landlord will be bound by the terms of this Lease.

c. Lessee shall, within ten (10) days following a request from Nyrstar, execute, acknowledge and deliver to Nyrstar and any then-current or prospective mortgagee or prospective purchaser of the Property, a written statement, in the form Nyrstar may, in the exercise of its reasonable business judgment, request to confirm certain matters under this Lease.

7. USE, OCCUPANCY AND OPERATION. The Intermodal Facility on the Lease Area shall be used, occupied and operated by Lessee, only as a multi-modal, multi-commodity, transloading and storage/distribution facility, and Nyrstar shall not make, do, conduct, suffer or permit any activities or practices on or about the Lease Area, or in connection with it, which might materially disturb or interfere with Lessee's use of the Intermodal Facility during the Lease Term. Conversely, Lessee shall not make, do, conduct, suffer or permit any activities or practices on or about the Lease Area, or in connection with it, which might materially disturb or interfere with Nyrstar's operations during the Lease Term. Lessee shall not use the Lease Area, or allow the Lease Area to be used, for any purpose or in any manner that would invalidate any policy of insurance now or hereafter carried on the Property or increase the rate of premiums payable on any such insurance policy. Should Lessee fail to comply with this covenant, Nyrstar may, at its option, require Lessee to stop engaging in such activity or to reimburse Nyrstar as additional rent under this Lease for any increase in premiums charged during the term of this Lease on the insurance carried by Nyrstar on the Property attributable to the use being made of the Lease Area.

8. UTILITIES AND ASSESSMENTS; TAXES; COMPLIANCE WITH LAW.

a. Lessee shall separately meter, or cause to be separately metered, all utility services to the Intermodal Facility or on the Lease Area serving the Intermodal Facility. Lessee shall pay, or cause to be paid, before delinquency all charges for gas, electricity, lights, heat, power, telephone, trash, water, sewer and other utility services used, rendered or supplied upon or in connection with the Lease Area during the Lease Term. If any of the foregoing utilities are not separately metered to the Lease Area, and it would be considered commercially unreasonable to do so, then Nyrstar and Lessee shall equitably prorate such utility usage to Lessee during the Lease Term and both parties shall insure that such utilities are paid so as there is continuous supply of utilities to the Lease Area. In the event that either Nyrstar or Lessee are determined to be excessive users of any such utilities, then the parties will equitably adjust the proration of utilities as necessary for the excessive user to pay its actual usage share of the same.

b. During the Lease Term, Lessee shall reimburse Nyrstar, or cause to be reimbursed, within thirty (30) days after presentation of the bill for the same, any increase to the tax value of the Property that is related to the Intermodal Facility and Lessee's Proportionate Share of all Taxes assessed against the Property. As used herein, (i) "Proportionate Share" shall mean the percentage the Lease Area bears to the Property and (ii) "Taxes" shall mean all general, *ad valorem* real estate taxes, and assessments for betterments and improvements that are levied or assessed by any lawful authority on the Property (general or special), including any substitution therefor, in whole or in part, due to a future change in the method of taxation. The Parties shall use good faith efforts to have the Lease Area assessed as a separate tax parcel, and in the event the Parties are successful with such effort, then Lessee shall reimburse Nyrstar, or cause to be reimbursed within thirty (30) days after presentation of the bill for the same, the

Taxes for the Lease Area. Taxes shall be reduced by any deferral, abatement, or other tax-lowering adjustment received by Nyrstar from the taxing authorities, provided Lessee shall be responsible for its Proportionate Share of any costs Nyrstar actually incurs from obtaining such reduction. Lessee shall be responsible for (1) all rental, sales and use taxes or other similar taxes, if any, levied or imposed on Base Rent and Additional Rent by any city, county, state or other governmental body having authority, such payment being in addition to all other payments required to be paid to Nyrstar by Lessee under the terms of this Lease and (2) pay all sales tax on rent and taxes levied against its personal property and trade fixtures in the Facility or otherwise on the Lease Area. Taxes shall not include any (A) income, excise, profits, estate, inheritance, succession, gift, transfer, franchise, capital, or other tax or assessment upon Nyrstar, (B) fines, penalties, costs or interest for any tax or assessment, or part thereof, which Nyrstar or its lender failed to timely pay or (C) taxes resulting directly from an increase in the assessment caused by a sale or ground lease of all or any portion of the Lease Area during the Lease Term.

c. At Lessee's request, Nyrstar, at no cost to Nyrstar, shall contest the amount of any Taxes. If Nyrstar fails to contest the Taxes within thirty (30) days of Lessee's written request, Lessee shall have the right to contest the amount of Taxes by appropriate proceedings conducted in good faith, whereupon Nyrstar, at no cost to Nyrstar, shall reasonably cooperate with Lessee, execute any and all documents, reasonably acceptable to Nyrstar, required in connection therewith, and, if required by any governmental authority having jurisdiction, join with Lessee in the prosecution thereof. If, as a result of any contest or otherwise, any rebate or refund of Taxes is received, Lessee shall be entitled to Lessee's Proportionate Share thereof.

d. Lessee shall comply with any and all ordinances, statutes, regulations, resolutions and similar enactments of all governmental authorities, and shall require RJCS to do likewise.

9. LIENS, RECORDING AND TITLE.

a. Lessee shall not, without the prior written consent of Nyrstar, create or permit to be created or to remain, and will discharge, at its expense, any mortgage, lien, security interest, encumbrance or charge on the Lease Area or any part thereof as a result of any act or indebtedness of Lessee within thirty (30) days after the imposition thereof. In the event Nyrstar consents to any such mortgage, lien, security interest, encumbrance or charge on the Lease Area or any part thereof, such consent shall be upon terms and conditions within Nyrstar's sole and absolute discretion.

b. Lessee, at its expense, shall execute, deliver and record, file or register from time to time all such instruments as may be required by any present or future law in order to evidence the respective interests of Nyrstar and Lessee in the Lease Area and Lessee shall, if it wishes to do so, or is requested by Nyrstar, execute a short form memorandum of this Lease, reasonably acceptable to Nyrstar, provided that Lessee shall (i) be responsible for recording such memorandum and all costs arising therefrom, (ii) provide Nyrstar a final recorded copy of such memorandum and (iii) be responsible for recording a cancellation of such memorandum at the expiration or earlier termination of this Lease and all costs arising therefrom.

10. INDEMNIFICATION. Each party hereto shall pay and protect, indemnify and save harmless the other Parties hereto from and against any and all liabilities, losses, damages, penalties, costs, expenses (including all reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, in any manner growing out of or connected with (i) such indemnifying party's use, nonuse, condition or occupation of the Lease Area or any part thereof, (ii) violation by the indemnifying party of any agreement or condition of this Lease, (iii) failure by the indemnifying party to comply with any restriction, statute, law, ordinance or regulation or otherwise to which the Lease Area is subject, and (iv) any negligence or intentional misconduct of the indemnifying party or its agents, contractors or employees.

11. MAINTENANCE AND REPAIR. Lessee shall accept the Lease Area in "as is" condition. Nyrstar shall not be required to maintain, repair or rebuild, or to make any alterations, replacements or renewals of any nature or description to the Intermodal Facility or the Lease Area or any part thereof during the Lease Term. During the Lease Term, Lessee shall continuously keep and maintain every part and portion of the Intermodal Facility and Lease Area, including mechanical equipment, in good order and repair and shall make all necessary maintenance, repairs and replacements thereto, all at its own expense.

12. CONDEMNATION. If, during the term, the Lease Area or any portion thereof is taken by condemnation or other eminent domain proceedings so as to render same commercially unsuitable for the use or occupancy of Lessee, then either Nyrstar or Lessee may, by sixty (60) days written notice to the other party, terminate this Lease. In the event this Lease is not terminated following such condemnation or other eminent domain proceedings, Lessee, at its sole cost and expense, shall be responsible for restoring any portion of the Intermodal Facility or Lease Area to a condition necessary for the continued permitted use thereof. All compensation awarded for such condemnation or eminent domain shall be the property of Nyrstar, and Lessee hereby assigns all of its right, title and interest in any such award to Nyrstar; provided, however, Lessee shall have the right to recover from the applicable governmental authority such compensation as is specifically awarded to Lessee based upon the value of the Intermodal Facility to the extent of any monies required to reimburse funds made available by the Federal Highway Administration through the Tennessee Department of Transportation under the Congestion Mitigation and Air Quality Program ("CMAQ"), to reimburse Lessee for any cost that Lessee may incur in removing Lessee's property or trade fixtures from the Lease Area, and to reimburse any loss of Lessee's business or any relocation expenses incurred by Lessee or the value of Lessee's interest in this Lease, except to the extent any such recovery right reduces Nyrstar's award.

13. SIGNS. Lessee shall have the right to erect and maintain reasonable signage to inform the public of the existence, location and operation of the Intermodal Facility, provided (a) Lessee obtains Nyrstar's prior written approval, which shall not be unreasonably withheld, conditioned or delayed and (b) such signage is consistent with all applicable laws.

14. SECURITY. At all times when Lessee is entitled to possession of any portion of Nyrstar's property pursuant to this Lease, or is otherwise in actual possession of the same, Lessee shall undertake and provide commercially reasonable security measures to protect that

property from vandalism, theft, fire and other casualty damage, destruction or loss. Notwithstanding the foregoing, Nyrstar, at its election, may provide security to the Lease Area, and in such event, Lessee shall reimburse Nyrstar for Lessee's proportionate share of the reasonable security expenses Nyrstar provides within twenty (20) days after Lessee's receipt of a reasonably documented invoice therefor.

15. INSURANCE AND WAIVER OF SUBROGATION.

a. During the Lease Term, Lessee will maintain, at its expense, insurance on the Lease Area of the following character: (i) insurance against loss or damage to the Intermodal Facility and Lessee's leasehold improvements and fixtures located on the Lease Area from fire or other risks typically insured by an "all-risk" casualty insurance policy for amounts equal to the full replacement costs thereof; (ii) general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Lease Area in the amount of not less than $5,000,000.00 per occurrence; (iii) workers' compensation insurance as required by law; (iv) employer's liability with minimum coverages of $100,000 for bodily injury per occurrence; and (v) automobile liability insurance with minimum coverages of $1,000,000.00 per occurrence, provided, however that RJCS may elect to retain self-insurance of a portion of the aforesaid coverage not to exceed five hundred thousand dollars ($500,000.00) per occurrence so long as RJCS is responsible for any losses or liabilities which would have been assumed by the insurance company or companies which would have issued such policy. Said insurance shall be written by companies reasonably acceptable to Nyrstar, and such insurance shall name Nyrstar and Lessee as the insured parties or additional insureds thereunder, as their respective interests may appear. Notwithstanding anything to the contrary contained in this paragraph, RJCS shall name MCPA as an additional insured on the insurance policies referenced in this paragraph during the period of the Lease Term that MCPA is Lessee.

b. During the Lease Term, Nyrstar will maintain, at its expense, general public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Lease Area in the amount of not less than $5,000,000.00 per occurrence. Said insurance shall be written by companies reasonably acceptable to Lessee, and such insurance shall name Nyrstar and Lessee as the insured parties or additional insureds thereunder, as their respective interests may appear.

c. Each party shall provide the other with a certificate of insurance for all of the insurance coverages required above prior to the Effective Date and such insurance shall be effective as of and from the Effective Date.

d. Each party hereto on behalf of themselves and all others claiming under them, including any insurer, waive all claims against each other, including all rights of subrogation, for loss or damage to their respective property located on the Lease Area (including, but not limited to, the Intermodal Facility) arising from fire, smoke damage, windstorm, hail, vandalism, theft, malicious mischief and any of the other perils normally insured against in an "all risk" of physical loss policy, regardless of whether insurance against those perils is in effect with respect to such party's property and regardless of the negligence of either party. If either

party so requests, the other party shall obtain from its insurer a written waiver of all rights of subrogation that it may have against the other party.

16. ASSIGNMENT AND SUBLETTING. Except as otherwise provided in the Commencement-Assignment Letter, Lessee, may not assign, hypothecate, mortgage or otherwise transfer this Lease or any interest therein to any other party or sublet or allow any other party to use all or any portion of the Lease Area without the prior written consent of Nyrstar, which consent shall not be unreasonably withheld. Nyrstar may condition its consent upon the proposed party having a financial status as good or better than that of Lessee. Notwithstanding anything to the contrary, Lessee shall remain liable under this Lease following any assignment thereof or sublease of all or any portion of the Lease Area. An assignment shall also mean (a) the direct or indirect sale, transfer, conveyance or other disposition, in one or a series of related transactions, of all or substantially all of the properties or assets of Lessee to any "person" (as such term is used in Section 13(d) of the Securities Exchange Act of 1934), (b) the adoption of a plan relating to the liquidation or dissolution of Lessee, or (c) the consummation of any transaction (including any merger or consolidation), the result of which is that any "person" or "group" (as such terms are used in Section 13(d) of the Securities Exchange Act of 1934), becomes the "beneficial owner" (as such term is used in Section 13(d) of the Securities Exchange Act of 1934) of more than fifty percent (50%) of the voting power or equity ownership of Lessee.

17. DEFAULT.

a. DEFAULT BY Lessee. The following shall constitute a default of this Lease by Lessee: (i) Lessee's failure to pay all or any part of the rent or other payments required to be paid by Lessee under this Lease when the same are due; (ii) Lessee's failure to perform or observe any other obligation, covenant or condition on Lessee's part to be performed or observed under the terms of this Lease within twenty (20) days after its receipt of written notice from Nyrstar specifying the failure under this Lease, provided if any such failure is such that it cannot be cured or remedied within such twenty (20) day period, then there shall be no default so long as corrective action is instituted by Lessee within such twenty (20) day period and diligently pursued until such failure is corrected; (iii) Lessee's failure to observe any obligation, covenant or condition under the Barge Services Agreement (as defined in the Recitals of this Lease); (iv) Lessee provides prior written notice to Nyrstar that Lessee intends to suspend Lessee's operation of the Intermodal Facility; or (v) except for an event of Force Majeure (as defined in Section 34 of this Lease), Lessee fails to continuously operate the Intermodal Facility. Following a default by Lessee, Nyrstar may, at its option, (1) terminate this Lease upon at least ten (10) days' prior written notice or (2) may (without any obligation) do whatever is necessary to cure Lessee's default under this Lease or the Barge Services Agreement on the account of and at the reasonable expense of Lessee, including Nyrstar's assumption of the offloading, storage and distribution of zinc ore or other materials used in Nyrstar's business operations on the Property, and all reasonable sums Nyrstar pays (including reasonable attorneys' fees and expenses plus Nyrstar's overhead cost of ten percent (10%)) shall constitute additional rent payable by Lessee under this Lease immediately upon its receipt of written demand therefor or such amount shall be offset from any amount Nyrstar owes RJCS pursuant to the Barge Services Agreement until Nyrstar is reimbursed in full. Subject to the provisions of Section 18 below, in the event Nyrstar elects to

terminate this Lease, Nyrstar, in addition to any other remedies available, shall have the immediate right to enter and repossess the Lease Area by summary or dispossess proceedings or otherwise, and remove therefrom all occupants and take and store any property abandoned by Lessee in a public or private warehouse or elsewhere at the cost of and for the account of Lessee, without becoming liable to prosecution or damages therefor, and thereupon all rights of possession to Lease Area of Lessee hereunder shall cease.

b. Notwithstanding any such termination and re-entry resulting from Lessee's violation of any covenant of this Lease, Lessee shall remain liable for any rent or damages which may be done or sustained prior thereto, and in addition, Lessee shall also be liable for further rents for the remaining term of this Lease, less such amounts as are recovered by Nyrstar as a result of the reletting of the Property. Nyrstar agrees to use commercially reasonable efforts to relet the Lease Area and/or to reasonably cooperate with MCPA with respect to the Lease Option, as set forth in Section 18 below.

c. In addition to all other remedies, Nyrstar is entitled to temporary and permanent injunctive relief against all violations by Lessee, actual, attempted or threatened of any covenant, condition or provision of this Lease.

d. DEFAULT BY NYRSTAR. The following shall constitute a default of this Lease by Nyrstar: (i) Nyrstar's failure to perform or observe any obligation, covenant or condition on Nyrstar's part to be performed or observed under the terms of this Lease within twenty (20) days after its receipt of written notice from Lessee specifying the failure under this Lease, provided if any such failure is such that it cannot be cured or remedied within such twenty (20) day period, then there shall be no default so long as corrective action is instituted by Nyrstar within such twenty (20) day period and diligently pursued until such failure is corrected; or (ii) should Nyrstar become the subject of a receivership or trusteeship. Thereafter, Lessee, in addition to any other remedies available to it at law or in equity, may, at its option, upon an additional ten (10) days' written notice and Nyrstar's failure to cure all existing defaults during such ten (10) day period, (1) terminate this Lease, and have no further obligations to pay rent hereunder, or (2) cure any default by Nyrstar under this Lease, and all costs and expenses actually incurred by Lessee, including, without limitation, reasonable attorney's fees, together with interest at the rate of one percent (1%) per month per year on the amount of costs and expenses so incurred, shall be paid by Nyrstar to Lessee. Lessee shall submit a reasonably documented invoice to Nyrstar for any costs actually incurred by Lessee to cure a default of Nyrstar. If Nyrstar fails to pay the costs so invoiced, together with interest as herein provided, within thirty (30) days after receipt of such invoice, Lessee shall have the right to seek legal action against Nyrstar for such sums, and Nyrstar will be responsible for any reasonable attorneys' fees or legal costs Lessee actually incurs in obtaining such costs.

18. EFFECT OF LEASE TERMINATION/ASSIGNMENT OPTION. Nyrstar acknowledges and agrees that a portion of the cost of making all of the improvements to Parcel B, constructing the Intermodal Facility and acquiring the equipment and fixtures necessary to operate the Intermodal Facility will be paid from funds made available by the Federal Highway Administration through the Tennessee Department of Transportation under CMAQ (as defined in Section 12 above). Therefore, if during the Initial Term Nyrstar desires to terminate this Lease pursuant to the terms hereof, Nyrstar shall immediately notify MCPA in writing of such

termination. Within twelve (12) months following such notice (the "Assignment Period"), MCPA shall have the option and right to assign this Lease to a third party ("Assignee") upon first receiving the prior written consent of Nyrstar, which consent shall not be unreasonably withheld; provided, however, as consideration for such consent, RJCS must assign, and Assignee must assume, the Barge Services Agreement, and a failure of such assignment and assumption of the Barge Services Agreement shall be deemed a reasonable cause for Nyrstar to withhold its consent to any proposed Assignee. Notwithstanding anything to the contrary contained in this Lease, during the Assignment Period Nyrstar may assume, at Lessee's expense, the offloading, storage and distribution of zinc ore or their materials used in Nyrstar's business operations on the Property provided under the Barge Services Agreement.

19. GOOD FAITH COOPERATION. Subject to the provisions of Section 4 of this Lease, the Parties intend to cooperate in good faith with each other in facilitating the efficient operations of the Existing Barge Facility and the Intermodal Facility and neither Party shall have the right to impose an unreasonable burden on shared costs of the Parties, if any, or that disrupts the normal barge offloading functions of the Existing Barge Facility or the Intermodal Facility. Each Party shall act in good faith to achieve the benefits expected and to resolve any problems that may occur in a commercially reasonable way. The Parties covenant and agree that they shall not knowingly take any action or enter into any commitment or agreement in connection with the transactions and activities contemplated hereunder that would result in a contravention of any provisions of applicable law, and to use commercially reasonable efforts in seeking to obtain all third party consents, licenses, sublicenses or approvals necessary to permit each other's business operations as set forth in this Lease.

20. PARTIES BOUND. This Lease shall be binding and inure to the benefit of the respective parties, their successors and assigns forever.

21. WAIVER. Neither the failure of either party to exercise any right, power or remedy to enforce a breach of any covenant or condition, nor the failure of either party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Lease shall be construed as a waiver or a relinquishment thereof for the failure.

22. RISK OF LOSS. If during the Lease Term less than a substantial portion of the Intermodal Facility is damaged or destroyed by fire, flood, storm or other casualty and the Intermodal Facility remains tenantable, Lessee, at its cost and expense, shall repair the Intermodal Facility and Lessee shall make such repairs, with no rent abatement. If during The Lease Term the Intermodal Facility is damaged or destroyed by fire or other casualty to such an extent as to render the same untenantable in whole or substantial part and such damage, destruction or other casualty cannot be repaired within ninety (90) days, as determined by a contractor mutually agreed to by the Parties, Lessee shall have the option to (a) rebuild the Intermodal Facility at its cost or (b) elect to terminate this Lease. Lessee shall elect either of the foregoing options in writing to Nyrstar within thirty (30) days after the occurrence of the damage, destruction or casualty. If Lessee is not in default under this Lease, upon such notice of termination, Lessee's liability for rent hereunder shall cease. Upon such termination, and subject to any requirements for the repayment of monies as necessary pursuant to CMAQ (as defined in

Section 12 above) funding, all insurance proceeds related to the Intermodal Facility shall be paid to Nyrstar and become the property of Nyrstar (excluding insurance proceeds Lessee is required to utilize in order to leave the Property in as good or better condition as existed on the Commencement Date, reasonable and ordinary wear and tear excepted, all proceeds related to Lessee's equipment or personality shall become the property of Lessee, and all other obligations hereunder shall terminate, except for any indemnity obligations that are intended to survive the termination or expiration of this Lease. If Lessee does not elect to terminate this Lease, then Lessee, at its sole cost and expense, shall commence reconstruction and repair of the Intermodal Facility to substantially the same condition and design as existed prior to any casualty, and shall complete same within one hundred twenty (120) days following the occurrence of the damage, destruction or casualty of the Intermodal Facility, during which no rent shall be payable hereunder; provided, however, in the event the Intermodal Facility is not reconstructed and repaired within such one hundred twenty (120) day period, Nyrstar may terminate this Lease within thirty (30) days following said one hundred twenty (120) day period. Notwithstanding anything to the contrary contained in this Lease, during any period of Lessee's reconstruction and repair of the Intermodal Facility, Lessee shall continue to provide Nyrstar with the offloading services provided in the Barge Services Agreement, the failure of which shall allow Nyrstar to access the Lease Area to do the same.

23. NYRSTAR'S RIGHT OF ACCESS. During the Lease Term, Nyrstar and its agents, employees or contractors shall have the right of access to the Intermodal Facility and Lease Area during regular business hours upon reasonable prior notice to Lessee to inspect the same, provided that such right shall not be exercised in any manner that would unreasonably interfere with the operations of Lessee. Notwithstanding the foregoing, in the event of an emergency, Nyrstar may access the Intermodal Facility or Lease Area without providing prior notice to Lessee.

24. ENVIRONMENTAL PROVISION. Notwithstanding any other provision contained in this Lease, Lessee shall fully and promptly pay, perform, discharge, defend, indemnify and hold harmless Nyrstar, its managers, members, officers, agents and employees from any and all claims, orders, demands, causes of action, proceedings, judgments, or suits and all liabilities, losses, costs or expenses (including, without limitation, technical consultant fees, court costs, expenses paid to third parties and reasonable legal fees) and damages arising out of, or as a result of: (i) any "release" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), caused by Lessee or RJCS or their employees, licenses, agents or contractors of any "hazardous substance", as defined in CERCLA, or petroleum (including crude oil or any fraction thereof) discharged, deposited, dumped, spilled, leaked or placed into, on or around the Property at any time during the Lease Term or any holdover thereof; (ii) any contamination by Lessee or RJCS or their employees, licensees or contractors, their agents or employees of the Lease Area or soil or groundwater on or under the Lease Area, or damage to the environment and natural resources of or around the Lease Area caused by Lessee during the Lease Term or any holdover thereof, whether arising under CERCLA or other statutes, regulations, or common law; and/or (iii) any toxic, explosive or otherwise dangerous materials, including, but not limited to, asbestos, which are brought on to the Lease Area by Lessee during the Lease Term or any holdover thereof, but excluding any

toxic, explosive or otherwise dangerous materials which were present at, buried beneath, placed on or concealed within or around the Lease Area prior to Lessee's possession of the same.

25. TIME. Time is of the essence in this Lease.

26. BINDING EFFECT. All of the covenants, conditions, and obligations contained in this Lease shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Lease may not be changed, modified, or discharged except by a writing executed by the party to be bound.

27. HEADINGS. The headings to the various paragraphs of this Lease have been inserted for convenient reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Lease.

28. CONSTRUCTION. Nothing contained in this Lease shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between or among any of the Parties, it being understood and agreed that neither the method of computation of rent, nor any other provision contained in this Lease, nor any acts of the Parties, will create any relationship between or among any of the Parties other than the relationship of lessor and lessee.

29. CMAQ OBLIGATIONS. The Parties mutually recognize and acknowledge that a portion of the cost of constructing the Intermodal Facility will be paid from funds made available by the Federal Highway Administration through the Tennessee Department of Transportation under CMAQ (as defined in Section 12 above) and that improvements funded under that Act must remain available for public use for their projected useful life, provided "public use" shall not be interpreted to give any person or entity, public or private, the right to use, access or occupy the Property or any portion thereof beyond the scope of the permitted use set forth in Section 7 of this Lease.

30. PARTIAL INVALIDITY. If any term, covenant or condition of this Lease or the application to any person or circumstances is, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected and each term, covenant or condition of this Lease will be valid and be enforced to the fullest extent permitted by law.

31. NOTICES. Any notice, demand or other writing to be given pursuant to this Lease will be deemed to have been given upon receipt or refusal, and to be effective for all purposes, when sent by certified mail, postage prepaid and return receipt requested, to the address, respectively, given for each party below. The Parties agree to appoint and maintain a coordinator with responsibility for ensuring that the overall intent of this Lease is achieved. In that regard, Nyrstar shall initially assign _____, RJCS shall assign _____, and MCPA shall initially assign _____ as their coordinator.

To Nyrstar:

Nyrstar Clarksville Inc.
1800 Zinc Plant Road
Clarksville, Tennessee 37040

To RJCS:

R. J. Corman Railroad Switching Company, LLC
101 R. J. Corman Drive
P.O. Box 788
Nicholasville, Kentucky 40356

To MCPA:

Montgomery County Port Authority
One Millennium Plaza
Clarksville, Tennessee 37040

32. GOVERNING LAW. This document shall be governed by and interpreted under the laws of the State of Tennessee, except as the application of the same may be preempted by federal law.

33. ATTORNEY'S FEES. In the event it is necessary for either party to employ an attorney to enforce the terms of this Lease, or file an action to enforce any terms, conditions or rights under this Lease, or to defend any action or arbitration, then the prevailing party in any such action shall be entitled to recover from the other, all reasonable attorney's fees, costs and expenses as may be fixed by the court, and such attorney's fees, costs and expenses may be made a part of any award or judgment entered.

34. FORCE MAJEURE. As used herein, the term "Force Majeure" shall mean any delays due to strikes, riots, acts of God, shortages of labor and materials, theft, fire, public enemy, or any other causes of any kind whatsoever that are beyond the reasonable control of Nyrstar or Lessee. The forgoing, however, shall not excuse any delay in making any payment due hereunder, including any payment of rent. Whenever a period of time is herein prescribed for action to be taken by Nyrstar or Lessee, Nyrstar or Lessee will not be liable or responsible for, and there will be excluded from the computation of time, any period of time due to Force Majeure.

35. FLOW THROUGH OF RIGHTS AND OBLIGATIONS. During any and all times when RJCS is operating the Intermodal Facility or present on the Lease Area, any and all rights and obligations of Lessee hereunder shall flow through to RJCS, and RJCS, by joining in this Lease, recognizes and acknowledges its assumption of said rights and obligations during all such times.

36. END OF THE LEASE TERM.

a. IMPROVEMENTS AND LESSEE'S PROPERTY. Lessee shall provide Nyrstar with written notice at least sixty (60) days prior to the expiration of the Lease Term, or as soon as reasonably practical prior to the earlier termination of this Lease, of Lessee's intention to either (i) leave the Intermodal Facility on Parcel B or (ii) remove the same at the expiration or earlier termination of the Lease Term. In the event Lessee elects (i) in the foregoing sentence, Lessee shall remove the Intermodal Facility and any and all of its personal fixtures, equipment and other property brought onto the Lease Area within one hundred twenty (120) days following the expiration or earlier termination of the Lease Term, and shall otherwise leave the Lease Area in as good or better condition as existed on the Commencement Date, reasonable and ordinary wear and tear excepted; provided, however, in the event the Intermodal Facility and Lessee's personal fixtures, equipment and other property are not removed within such 120-day period, then the same shall automatically become the property of Nyrstar.

b. HOLDOVER. If Lessee holds over after the expiration or earlier termination of this Lease without the consent of Nyrstar, Lessee shall become a tenant at sufferance and such tenancy shall be terminable at will upon Nyrstar submitting written notice to Lessee. If Lessee holds over after the expiration or earlier termination of this Lease with the consent of Nyrstar, then the Term shall continue on a month to month basis at a rate of one hundred twenty-five percent (125%) of the average rent payable under Section 3 of this Lease for the prior year during the Lease Term plus any additional rent due hereunder, and otherwise upon the terms, covenants and conditions herein specified. Acceptance by Nyrstar of rent after such expiration or earlier termination of this Lease shall not constitute consent to a holdover hereunder or result in a renewal of this Lease. Notwithstanding Nyrstar's consent to Lessee's holdover hereunder, no holding over by Lessee shall operate to extend this Lease, and during such month to month term more particularly described above, Lessee shall vacate and surrender the Lease Area to Nyrstar upon Lessee being given thirty (30) days prior written notice from Nyrstar to vacate or upon Lessee providing Nyrstar thirty (30) days prior written notice of its intent to vacate the Lease Area. The foregoing provisions of this Section are in addition to and shall not affect Nyrstar's right of re-entry or any other rights of Nyrstar hereunder or as otherwise provided by law.

37. CONSTRUCTION OF INTERMODAL FACILITY.

a. Design, Construction and Cost of the Intermodal Facility. Lessee and RJCS agree that no representations, statements or warranties expressed or implied have been made by or on behalf of Nyrstar in respect to the Lease Area except as contained in this Lease. Upon the Effective Date, Lessee shall accept the Premises in its existing condition and state of repair. Lessee shall, or cause RJCS to, construct the Intermodal Facility on Parcel B of the Lease Area. The construction of the Intermodal Facility shall be carried out by RJCS's own forces or if by contract, then a contractor reasonably acceptable to Nyrstar (the "Contractor"). Nyrstar, at no cost or expense to Nyrstar, shall cooperate with Lessee and RJCS in (i) developing plans and specifications for the Intermodal Facility (the "Plans"), which shall be prepared by architects and engineers selected by Lessee or RJCS and reasonably approved by Nyrstar (the "Design Consultants"), and (ii) securing all governmental and regulatory approvals and permits required for the construction and operation of the Intermodal Facility. The Plans shall be subject to the prior written approval of Nyrstar. All reasonable costs actually incurred with Nyrstar's review

and approval of the Plans shall be paid by Lessee or RJCS. Lessee or RJCS shall contract directly with the Design Consultants, and Lessee or RJCS shall be solely responsible for payment of any fees and/or payments due to the Design Consultants. The Design Consultants and RJCS representative or the Contractor, whichever applicable, must be licensed to practice their professional discipline in the state in which the Property is located and shall be capable of providing stamped Construction Documents (as hereinafter defined) to local government officials for permit approvals. Neither Lessee nor RJCS shall suffer or permit any mechanic's liens or materialmen's liens to be filed against the Property or against the leasehold interest under this Lease in connection with fees due to the Design Consultants or RJCS or the Contractor, whichever applicable,. The Design Consultants shall submit for Nyrstar's approval documents setting forth in detail the requirements for construction of the Intermodal Facility and shall include drawings and specifications that establish in detail the quality of materials and systems to be used for the Intermodal Facility (the "Construction Documents"). Nyrstar shall approve or deliver written comments regarding the Construction Documents to Lessee and RJCS. All reasonable costs actually incurred with Nyrstar's review and approval of the Construction Documents shall be paid by Lessee or RJCS. The Construction Documents shall comply with local building codes, regulations and laws and include, without limitation, architectural, structural (if required), mechanical, fire protection, plumbing and electrical drawings and specifications. The Construction Documents shall be provided to Nyrstar in the following formats: two sets of drawings and one CD-ROM disk containing the drawings in the CAD format approved by Nyrstar.

b. Completion of the Intermodal Facility. Lessee and RJCS warrant to Nyrstar that (i) the Intermodal Facility will be constructed in accordance with the Plans and Construction Documents, (ii) all materials and equipment furnished will be suitable for their intended purposes, (iii) the Intermodal Facility will be of good quality, free from faults and defects in all material respects, and (iv) the Intermodal Facility shall comply in all material respects with all applicable laws, codes and regulations, including, by way of example but not as a limitation, environmental, zoning, building and land use laws. Lessee and RJCS shall cause the repair or replacement of any defects in material or workmanship of the Intermodal Facility, if any, within the period of one (1) year after the date of substantial completion of the Intermodal Facility, and Lessee and RJCS agree Nyrstar shall not be responsible for any defect of any nature whatsoever in the Intermodal Facility. The "substantial completion" of the Intermodal Facility shall be the date the Intermodal Facility is certified by RJCS or the Contractor, whichever applicable, as complete, except for normal punch list items that can reasonably be completed after RJCS's commencement of operations in the Intermodal Facility without substantial interference to its business operations. RJCS shall construct the Intermodal Facility in a manner so as to minimize any disruption to Nyrstar's business operations on the Property.

c. Construction Deadline. Notwithstanding anything to the contrary contained in this Lease, in the event the substantial completion of the Intermodal Facility has not occurred within two (2) years following the Effective Date, Nyrstar shall have the right to terminate this Lease without penalty by providing written notice thereof to Lessee within sixty (60) days following such two (2) year period. Following the termination of this Lease, each party hereto shall be released of all obligations under this Lease following such termination date,

provided the Parties shall remain liable for all obligations accruing prior to the termination date and the Lease Area shall be restored to its condition as of the Effective Date.

d. Insurance. During the construction of the Intermodal Facility, RJCS or the Contractor, whichever applicable, and any subcontractors shall maintain insurance in such coverages and amounts as required of Lessee under Section 15(a) of this Lease.

38. ENTIRE AGREEMENT. This Lease sets forth all of the covenants, promises, and understandings between or among the Parties, except as may be the subject of separate written agreement, and the Parties hereto respectively acknowledge that there are no covenants, promises, representations, inducements, conditions or understandings, either oral or written, between or among them other than as here set forth with respect to this Lease. No alteration, amendment, change or addition to this Lease will be binding on any party unless reduced to writing and executed by the party to be so bound. This Lease may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement, and, in making proof of this Lease, it shall not be necessary to produce or account for more than one such counterpart. Telecopied or emailed signatures shall be given the effect of original, manually executed signatures.

[signatures appear on following page]

IN WITNESS WHEREOF, the Parties have caused this Lease to be executed as of the day and year of the last party to sign below.

Nyrstar Clarksville Inc.

By:_____
Name: _____
Title:_____
Date:_____

Montgomery County Port Authority

By:_____
Name: _____
Title:_____
Date:_____

R. J. Corman Railroad Switching Company, LLC

By:_____
Name: _____
Title:_____
Date:_____

EXHIBIT A

Description of the Property

EXHIBIT B

Survey of the Lease Area

EXHIBIT C

Commencement-Assignment Letter

[Nyrstar's Letterhead]

Montgomery County Port Authority
One Millennium Plaza
Clarksville, Tennessee 37040

R. J. Corman Railroad Company Switching, LLC
101 R. J. Corman Drive, P.O. Box 788
Nicholasville, Kentucky 40356

Re: Lease Agreement ("Lease"), dated _____, 2014, among Nyrstar Clarksville Inc., a Maryland corporation ("Nyrstar"), R. J. Corman Railroad Company Switching, LLC, a Kentucky limited liability company ("RJCS"), and the Montgomery County Port Authority, an entity created under the laws of Tennessee ("MCPA").

Dear _____:

The purpose of this letter is to confirm the following:

(i) The Commencement Date for the referenced Lease is _____.

(ii) The expiration date is _____.

(iii) MCPA conveys and assigns to RJCS all of MCPA's right, title and interest as "Lessee" under the Lease, which assignment shall be effective from and after the Commencement Date. RJCS assumes and agrees to be bound by all duties and obligations as "Lessee" under the Lease from and after the Commencement Date, provided MCPA shall remain liable for all obligations, claims, demands, actions, losses, damages, orders, judgments and any and all costs and expenses to the extent arising from any matters under the Lease prior to the Commencement Date.

Please acknowledge your agreement with the provisions of this letter by signing the extra copy of this letter and returning the same to the undersigned. This letter may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one agreement, and, in making proof of this letter, it shall not be necessary

to produce or account for more than one such counterpart. Telecopied or emailed signatures shall be given the effect of original, manually executed signatures.

Sincerely yours,

Nyrstar Clarksville Inc.,
a Maryland corporation

By:_____
Title:_____

Acknowledged and Agreed to By:

MCPA:

Montgomery County Port Authority, an entity created under the laws of Tennessee

By:_____
Printed Name: _____
Title: _____
Date: _____

Acknowledged and Agreed to By:

RJCS:

R. J. Corman Railroad Company Switching, LLC, a Kentucky limited liability company

By:_____
Printed Name: _____
Title: _____
Date: _____

RESOLUTION TO ESTABLISH TAX INCREMENTAL FINANCING (TIF)

WHEREAS, Montgomery County wants to encourage retail development and development complimentary to same; and

WHEREAS, development and redevelopment increases the tax base by increasing property values; and

WHEREAS, Tennessee law allows for incentives that can be developed by Tax Incremental Financing (TIF); and

WHEREAS, TIF areas, projects, or development areas can be established under current State law with notice to the public.

NOW, THEREFORE, BE IT RESOLVED by the Montgomery County Board of Commissioners assembled in Regular Session on this 10th day of August, 2015, that the Budget Committee is authorized to establish a TIF Committee for the development of appropriate projects, districts, or areas that can be identified and established under applicable State law and to promulgate rules, outlines of procedures, and scope of grant incentives consistent with State law.

BE IT FURTHER RESOLVED that the Budget Committee shall appoint a subcommittee for the review, analysis and consideration of the same comprised of citizens and officials of the county for said purpose.

Duly passed and approved this 10th day of August, 2015.

Sponsor _____

Commissioner _____

Approved _____
County Mayor

Attested _____
County Clerk